110-305

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

No. 203.

C. S. JEFFRIES, ADMINISTRATOR OF ALLAN A. KENNEDY, DECEASED, PLAINTIFF IN ERROR,

vs.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF MISSOURI.

FILED NOVEMBER 20, 1880.

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1 UNITED STATES OF AMERICA, *ss.*

The President of the United Stated to the Honorable the Judge of the Circuit Court of the United States for the Eastern District of Missouri, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit before you, at the September term, 1879, thereof, between C. S. Jeffries, administrator of the estate of Allan A. Kennedy, deceased, plaintiff, and The Mutual Life Insurance Company of New York, defendant, a manifest error hath happened to the great damage of the said plaintiff, as by his complaint appears.

We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the 2nd Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 13th day of March, in the year of our Lord one thousand eight hundred and eighty.

Issued at the office in the city of St. Louis, with the seal of the Circuit Court of the United States for the Eastern District of Missouri, dated as aforesaid.

[SEAL.] M. M. PRICE,
Clerk Circuit Court United States, Eastern District of Missouri.

By A. P. SELBY,
Deputy.

Allowed by
SAMUEL TREAT, *Judge.*

1½ *Return to Writ.*

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI, } *ss.*

In obedience to the command of the within writ, I herewith transmit to the Supreme Court of the United States a duly certified transcript of the record and proceedings in the within entitled case, with all things concerning the same.

In witness whereof, I hereto subscribe my name, and affix the

seal of said circuit court, at office in the city of St. Louis, this 6th day of September, A. D. 1880.

[SEAL.]

M. M. PRICE,
Clerk of Said Court.
By A. P. SELBY,
Deputy.

(Endorsed:) No. 825. United States Circuit Court, Eastern District of Missouri. C. S. Jeffries, adm'r, vs. Mutual Life Ins. Co. of N. Y. Writ of error to the Circuit Court of the U. S., Eastern Distr. of Missouri. Returned and filed, day of , 187 . , Clerk.

2 The United States of America, to the Mutual Life Insurance Company of New York, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States of America, to be holden at Washington, on the second Monday of October next, pursuant to a writ of error, filed in the clerk's office of the Circuit Court of the United States for the Eastern District of Missouri, wherein C. S. Jeffries, administrator of the estate of Allan Kennedy, deceased, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Samuel Treat, Judge of the Circuit Court of the United States for the Eastern District of Missouri, this 13th day of March, in the year of our Lord one thousand eight hundred and eighty.

SAMUEL TREAT,
Judge United States Circuit Court
Eastern District of Missouri.

2½ We acknowledge service of the within citation this day, March 13th, 1880.

GLOVER & SHIPLEY,
For The Mutual Life Insurance Company of New York.

(Endorsed:) 825. United States Circuit Court Eastern District of Missouri. C. S. Jeffries, Adm'r, &c., vs. Mutual Life Ins. Co. Citation. Filed March 13, 1880. M. M. Price, Clerk.

3 UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF MISSOURI, }

In the Circuit Court of the United States in and for the Eastern District of Missouri, September Term, A. D. 1879.

Agreement.

C. S. JEFFRIES, ADMINISTRATOR DE BONIS NON of the estate of Allan A. Kennedy, deceased, Petitioner,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF New York, Respondent.

By consent of parties, the pleadings, proceedings, affidavits, and exhibits in the above case are herewith set out in their chronological order, reference being made to the bill of exceptions on page 177.

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7 UNITED STATES OF AMERICA, SOUTHERN DISTRICT OF MISSOURI, } *sct.*

In the Circuit Court of the United States in and for said Eastern District.

Be it remembered that on the fifteenth day of December, A. D. 1879, at a regular stated term of the Circuit Court of the United States in and for the Eastern District of Missouri, begun and held at the city of St. Louis, in said district, on Monday, September 15th, in said last-named year, there was filed in said court a certain motion in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

Motion to vacate and expunge entry of satisfaction of judgment.

C. S. JEFFRIES, AS ADMINISTRATOR DE BONIS non of the estate of Allan A. Kennedy, deceased, Plaintiff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York, Defendant.

Now at this day comes the above-named plaintiff, by his
8 attorney, and moves the court to set aside and vacate and cancel, annul, and expunge from the record a certain entry of satisfaction of the judgment rendered by this court in said cause on the 8th day of October, 1877, which said entry, as it appears on the margin of the record of said judgment, is in the following words, to wit: "I hereby enter satisfaction of this judgment in full, this 15th day of December, 1879. C. S. Jeffries, adm'r, &c., by Joseph S. Laurie, his att'y." "Attest, M. M. Price, clerk, by T.

L. Crawford, D. C.;" and which said judgment is recorded in law record book " H," page 61, of the office of the clerk of this court.

Plaintiff states, in support of his said motion, that said entry of satisfaction was made by said Joseph L. Laurie wholly without authority from him or from any one authorized to represent him ; that it was made in fraud of plaintiff's rights, and without consulting plaintiff as to the same ; and that it was made after the said Laurie had been notified by plaintiff's attorney, T. W. B. Crews, that plaintiff would not ratify or confirm or consent to a pretended settlement or compromise of the said cause entered into, as plaintiff is informed, between the said Laurie and the said defendant.

Plaintiff further states, that said cause, as will appear by the records of this court, was taken to the Supreme Court of the United States by writ of error to this court, and made returnable to said Supreme Court at the October term, 1878, thereof, upon the application of said defendant; that plaintiff incidentally learned on Friday last, for the first time, that said writ of error had been dismissed in said Supreme Court of the United States on the 11th day of March, 1879, but only ascertained the facts in relation thereto late on Saturday evening of last week, and that it had been settled or compromised, by the payment to said Laurie by the defendant of the sum of $9,000 at the time of the dismissal thereof as aforesaid; that plaintiff, by his said attorney, Crews, at once notified said Laurie and the said defendant that he would not ratify or consent to said settlement or compromise, and that the same was entered into wholly without authority from him.

Plaintiff further represents to this court, that he is a party in this cause in his representative capacity as administrator, and that he could not himself consent to or authorize a compromise of said claim and judgment, without an order of the Probate Court of Franklin County, Missouri, the court having jurisdiction of said decedent's estate, and no such order has been made.

Plaintiff asks for such orders, in this behalf, as to the court may seem proper.

T. W. B. CREWS AND
T. THOROUGHMAN,
for Plff.

And afterwards, to wit, on the twelfth day of December, 1879, the following notice of motion, with return thereon, was filed in said cause, said notice and return being in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADMINISTRATOR OF THE ESTATE OF Allan A. Kennedy, deceased,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York.

Notice of Motion.

SIR: You will take notice that I have filed a motion in the above-entitled cause, moving the said court to expunge, vacate, and annul the entry of satisfaction of the judgment therein, which entry was made by you on the 15th day of December, A. D. 1879, and that I will call up said motion for hearing in said United States circuit court on the 5th day of January, 1880, or as soon
12 thereafter as the same can be heard.

T. W. B. CREWS,
Atty. for said Plaintiff.

To JOSEPH S. LAURIE, ESQ.,
521 Olive st., St. Louis, Mo.

UNITED STATES OF AMERICA, } *ss.*
EASTERN DISTRICT OF MISSOURI, }

Return on Notice of Motion

I hereby certify that I have served a copy of the within notice on the within named Joseph S. Laurie, at St. Louis, in said disrict, on the 19th day of December, 1879.

H. W. LEFFINGWELL,
U. S. M., E. D. of Mo.
By JOHN B. PADDLEFORD,
Dep'y.

And afterwards, to wit, on the sixth day of January, A. D. 1880, at said September term, 1879, of said circuit court, the following affidavit of C. S. Jeffries wasfiled in said cause, to wit:

13 In the Circuit Court of the United States for the Eastern District of Missouri.

Jeffries' Affidavit for Petitioner.

C. S. JEFFRIES, ADM'R DE BONIS NON OF THE Estate of Allan A. Kennedy, dec'd, Plaintiff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York, Defendants.

STATE OF MISSOURI, } *ss.*
CITY OF ST. LOUIS, }

This affiant, C. S. Jeffries, being duly sworn, on his oath says,

that he is the administrator of the estate of said decedent, Allan A. Kennedy, and, as such, is the plaintiff in the above-entitled cause; that said administration is still pending in the Probate Court of Franklin County, Missouri; that affiant resides in said county of Franklin, and about forty-five miles from this city of St. Louis, and about two miles from Labadie station on the Pacific Railroad, and that he has resided at the same place for the last several years, and ever since his administration of said estate
14 begun; that when he took charge of said estate, the said suit above mentioned was then pending in said court, or in the Supreme Court of the United States, and in the name of Charles W. Jeffries, now deceased, as administrator of said estate and as plaintiff therein; that affiant has never, at any time or place, given permission to any attorney or other person to compromise or settle said suit, either by word or in writing or otherwise, nor has he authorized or consented to or in any way ratified any settlement or compromise of said suit, nor has he authorized any satisfaction of the judgment in said cause, nor of any part thereof; that he has never received any money whatever upon said judgment, and never heard that any settlement or pretended settlement had been made therein until on Monday of this week, Dec. 15th, 1879, and then learned the same by letter from T. W. B. Crews; that affi-
15 ant, on the same day, wrote and mailed a letter to the president and directors of said Mutual Life Insurance Company of New York, at New York City, denying the authority of any one to compromise or settle the said suit, and refusing to ratify or in any way to confirm the same.

Affiant further states that he supposed said cause was being conducted on his part by said Crews, and did not even know that Joseph S. Laurie was an attorney in the cause; that he has no recollection of having ever communicated with said Laurie on the subject of said suit in any manner or form whatever; and states that as soon as he learned of the fact that said Laurie was attempting, or had attempted, to compromise the said suit, affiant wrote to the clerk of the Supreme Court of the United States at Washington City and withdrew all authority of said Laurie to represent him; that the entry of satisfaction of judgment made by said
16 Laurie on the records of this court in said cause was wholly without right or authority from this affiant, and is greatly prejudicial to the interests of affiant and to the creditors of said estate, and distributees thereof.

C. S. JEFFRIES.

Subscribed and sworn to before me, this 18th day of December, A. D. 1879.

A. P. SELBY,
U. S. Commissioner, Eastern District Mo.

And afterwards, on the 6th day of January, A. D. 1880, in said cause, the following affidavit of T. W. B. Crews was filed in said circuit court, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, AS ADMINISTRATOR DE BONIS NON OF THE ESTATE of Allan A. Kennedy, deceased, Plaintiff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, DEFENDANT.

Affidavit of Crews for Petitioner.

17 T. W. B. Crews, being duly sworn on oath, states that the above-entitled suit against said defendant was originally brought by him and Joseph S. Laurie, as attorneys for the plaintiff, as appears by the record in said cause; that *he* has continued and is still acting as one of the attorneys for plaintiff in said cause; that to the best of his knowledge and belief, all instructions and directions given by plaintiff as to the management of said cause have been made to and through him individually and not to any other attorney or person whomsoever; that he, the affiant, has never at any time made or authorized any other person to make any compromise or settlement whatever of said suit, or received or authorized any other person to receive any money or other property in compromise or settlement thereof, and was never informed and did not know or suspect that any compromise or settlement of
18 said suit had ever been made or proposed to be made by said Laurie or any other person, or that any money was ever received or paid by defendants in compromise, settlement, or payment of the judgment rendered in said cause until he, on the day of December, 1879, accidentally discovered the same on application to the clerk of the Supreme Court of the United States for the purpose of learning when the case was likely to be reached in the United States Supreme Court, and of obtaining a printed copy of the transcript from said clerk.

Affiant further says that on the second trial of this cause in this court, it was necessary for him to testify as a witness therein, and for that purpose he withdrew from the active participation in the trial, and so announced to the court at the time; but that he continued after said trial to act as attorney in said cause up to the time of the third trial, and then again for the same reason
19 withdrew from the active participation in the trial, and again so announced to the court; that in all subsequent proceedings he supposed that he was still recognized as attorney in the case, and if any proceedings were had in which his name was left out his attention was not called to it, and he was not aware of it; and that he has never otherwise than as herein stated withdrawn from said case.

Affiant further states that Charles W. Jeffries, the first administrator of the estate of said Kennedy, was the brother-in-law of this affiant, and that C. S. Jeffries, the plaintiff here, is the father-in-law of affiant, and that he has reason to believe and does believe that said Charles W. and C. S. Jeffries have at all times left this cause and the conduct thereof *exclusively* to the care and management of affiant, and that they never at any time consulted with said
20 Laurie in any particular whatever in reference to said cause.

And affiant further states that it never occurred to him that said Laurie regarded him as no longer an attorney in the case, or that said Laurie would take any important steps in relation thereto without consulting him.

And affiant states that immediately upon learning that said Laurie, without authority, had attempted to compromise said cause, he gave notice to said Laurie and the defendant that his action therein would not be ratified or confirmed; that no part of any money which was received by said Laurie from defendant was ever tendered or paid to this affiant.

T. W. B. CREWS.

Subscribed and sworn to before me, this 6th day of January, 1880.

M. M. PRICE, *Clerk.*
By A. P. SELBY, *D. C.*

21 *Letter of O. H. Palmer. Exhibit to Crew's Affidavit.*

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
LAW DEPARTMENT,
140 to 146 Broadway,
NEW YORK, *December 16th*, 1879.

T. W. B. CREWS, Esq.,
600 Olive street, St. Louis, Mo.

DEAR SIR: I am surprised by your letter of the 13th inst. in reference to the Jeffries case.

The claim was settled on the 14th of February, 1879, with Mr. Jeffries, through his agent and attorney, Mr. Laurie, by the payment of $9,401.42.

A full discharge was executed, suit discontinued, and its dismissal from the calendar authorized.

Before the final settlement we had been in correspondence with Mr. Laurie for some months, he making various propositions of closing up the litigation. I, finally, on the sixth of February, 1879, made him a final proposition, which he accepted, and came on to New York, and the matter was closed accordingly. The vouchers, I believe, are full and complete. So far as the company is concerned, I take it that the authority to make the compromise
22 with the attorney and counsel in the case cannot be questioned.

If Mr. Laurie has wronged his client by assuming to act without his knowledge or consent, I suppose his client can call him to account. I suppose when Mr. Laurie gave me distinctly to understand that he was acting with the knowledge of his client, he *was* acting with the knowledge and assent of his client.

He certainly manifested the most determined energy on behalf of his client to secure from the company the very best possible terms available.

I regret that any difficulty has occured between Mr. Laurie and his client, or between you and Mr. Laurie, making it necessary to call up the case again. I was not anxious for a compromise, and, certainly, if I had the least suspicion that it was not desired or sought by Mr. Jeffries, the proposition would not have been sustained for a moment. Your notice of dissatisfaction of Mr. Jeffries comes too late.

I can only assure you that the company has acted in the utmost good faith, and I believe the settlement is final and conclusive. I have no hesitation, however, in saying that, if the amount paid on the compromise shall be returned to the company with interest, it will cheerfully consent to reinstate the case.

Yours truly,

O. H. PALMER,
Solicitor.

23 And afterwards, on said 6th day of January, 1880, the following affidavit of T. L. Crawford was filed in said cause, to wit:

In the United States Circuit Court for the Eastern District of Missouri.

C. S. JEFFRIES, ADM'R,
vs.
MUTUAL LIFE INS. CO. OF N. Y.

Affidavit of Crawford for Petitioner.

T. L. Crawford, being duly sworn upon oath, says that he is and was at the time hereinafter referred to deputy clerk of the United States Circuit Court for the Eastern District of Missouri; that at the time entry of satisfaction of judgment in the above-entitled cause was made Joseph S. Laurie, Esq'r, requested Mr. Selby and affiant to say nothing about the entry of satisfaction of said judgment at present, or words to that effect, as near as he can remember.

T. L. CRAWFORD.

24 Subscribed and sworn to before me this the 6th day of January, 1880.

A. P. SELBY,
U. S. Com'r, East. Dist. Mo.

And afterwards, to wit, on the tenth day of January, 1880, the following affidavit of John H. Overall was filed in the said cause, to wit:

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI.

On motion of plaintiff to set aside satisfaction of judgment in case of—

C. S. JEFFRIES, ADM'R,
vs.
THE MUTUAL LIFE INS. CO. OF NEW YORK.

Affidavit of Overall for Respondent.

This affiant states that upon tbe occasion of the trial of the above cause in this court he was of counsel on behalf of def't, and participated as such. At the trial T. W. B. Crews testified on
25 the part of plff., and upon his cross-examination said that he was not then of counsel in the case, but had at one time been the attorney of the plaintiff. This affiant further says that he inferred from the testimony of said Crews that he had no interest in the result of the trial, but according to the recollection of the affiant he did not in express terms ask said crews whether he was pecuniarily interested in such result.

JOHN H. OVERALL,

Subscribed and sworn to before me, this 9th day of January, A. D. 1880. Commission expires Feb'y 17th, 1882.

[SEAL.] SAM'L M. TUTT,
Notary Public, City of St. Louis, Mo.

And on said 10th day of January, A. D. 1880, the following affidavit of George A. Castleman was filed in said cause, to wit:

UNITED STATES OF AMERICA,
EASTERN DISTRICT OF MISSOURI, *ss.*

Affidavit of Castleman for Respondent.

26 On motion of defendant to vacate satisfaction of judgment in case of Jeffries, adm'r de bonis non, vs. The Mutual Life Insurance Co., of New York—

Affiant, George Castleman, states that in an office partly occupied by himself, on the 13th day of Dec., 1879, he heard T. W. B. Crews state in a conversation with Laurie, that "no man could have made him think that he, Laurie, would have treated Crews in that way." Crews then walked out of the office and Laurie followed him into the hall, where they had further conversation,

which I did not hear. Affiant is an att'y-at-law in the city of St. Louis.

GEORGE A. CASTLEMAN.

Subscribed and sworn to before me, this 9th day of January, 1880.

[SEAL.] ANGUS CAMERON,
Notary Public within and for the City of St. Louis, Mo.

27 And on said tenth day of January, 1880, the following affidavit of A. P. Selby was filed in said cause, to wit:

Affidavit of Selby for Respondent.

UNITED STATES OF AMERICA, } *ss.*
EASTERN DISTRICT OF MISSOURI. }

On motion of plaintiff to set aside satisfaction of judgment in case of Jeffries, Adm'r *de bonis non*, vs. The Mutual Life Insurance Company of New York—

This affiant, A. P. Selby, who is deputy clerk of this court, states that he remembers that on one occasion Mr. Jos. S. Laurie, the attorney in case of Jeffries, Adm'r *de bonis non*, vs. Mutual Life Insurance Co. of N. Y., called at the clerk's office and called for the papers in the above case. Laurie says that he stated at the time that his object was to use the policy. This affiant does not recollect such an expression, though Laurie may have made use of said remark; at any rate, if he did use the expression, affiant only understood that he merely wished to use the same in the office.

28 In regard to the affidavit of Crawford, filed by plff. in this motion, also deputy in this office, affiant well remembers when Mr. Laurie called at the office of the U. S. cir. clerk on the morning of Dec. 15th, 1879. Mr. Laurie stated to affiant that the Jeffries case had been settled and that he wanted to enter satisfaction. Laurie further stated that he desired this matter to be kept from the press for a few days, as he expected in the meantime to have a settlement with Crews. Affiant requested Mr. Crawford to procure the record containing the judgment, which he did, drawing up the form of satisfaction, which was duly signed then and there by said Laurie.

A. P. SELBY.

Subscribed and sworn to before me this 9th day of Jan'y, 1880.

M. M. PRICE, *Clerk.*
By T. L. CRAWFORD, *D. C.*

29 And on said tenth day of January, 1880, the following affidavit of Andrew MacKay, Jr., was filed in said cause, to wit:

I therefore advised, as there was no prospect of being able to settle with the company, to prosecute the case.

In the case against the Mutual Life Insurance Company, upon examination, I advised that there was a substantial difference
35 between the two policies, the latter, by its terms, making the answers, by its terms, *representations*, and thereby vitiating the policy, of said answers were not only be false but *material*. As a further fact, Crews stated to me that the agent had informed him, after his discharge, that he made up the application and filled in the answer "single," upon his own supposition that such answer was earnest, and that Kennedy signed the same without reading it, upon his (the agent's) statement that the same was all right.

Affiant advised that this was a perfect defence, independent of the other, provided the agent would so testify.

The answers were filed in the U. S. circuit court, setting up, as before intimated, a breach of warranty in this statement as a defence.

Affiant prepared and filed the reply in accordance with his views before expressed, setting up in the mutual case the defence that pl'ff was fraudulently induced by the agent to sign the answer in ignorance of its real contents, and, secondly, that by the terms of the contract the statement complained of was by the contract not a warranty, but merely a representation, and did not, therefore, vitiate the policy.

The case came up to be heard before the court, and the
36 agent was placed by pl'ff on the stand, and he testified, emphatically denying any such interview with Crews, and, on the contrary, asserting most emphatically that assume had dictated the answer "single," and had signed the application knowing that such answer was contained therein.

I then argued the case before the court on the legal proposition as to representation and obtained a judgment.

Crews had up to that time, and has since up to the time of this motion, left the entire conduct of these causes to affiant, and every step taken in behalf of pl'ffs to the federal court, including the agreements, was by this affiant; the handwriting of said Crews in no place appears, except in one blank præcipe for subpœna.

The opinions of affiant as aforesaid were duly reported to Crews, and it was agreed between Crews and affiant that we would prosecute the causes even to the Supreme Court upon a contingent fee of ½ the amount recovered in each case.

The att'ys to have authority to compromise either case at whatever terms and in whatever manner it should appear to the att'ys to be in the interest of the estate. Crews replied that this was all right, and he would make the agreement with his bro.-in-law, the adm'r.

Sometime afterwards, affiant cannot state exactly how
37 long, Chas. W. Jeffries, the adm'r, who was a resident of

Franklin County, and in the habit of visiting the office of Crews and Laurie, and with whom affiant was well acquainted, visited the office of Crews and Laurie, and in the course of the conversation he referred to these cases, asking me about them, their condition, and my opinion in reference thereto, and in reply informed him in full, stating the desperate character of the Economical case, and speaking more hopefully of the Mutual Life case, stating the different legal propositions involved therein. He incited me (including Crews, who was not present) to great exertion, remarking that if we did not gain the cases of course we would receive no fees. I replied that I understood the matter, and, according to my understanding from Crews, Crews and myself as the attorneys were to receive a contingent fee of one-half the amount received in each case, with privilege of compromising such cases in whatever manner the interests of said estate, in the opinion of counsel, seemed to require, said Jeffries acquiesced and affirmed the statement as to the cash act.

Some other general remarks were made about courses which the cases would pursue and the time necessary to reach a final adjudicant.

The aforesaid statement of the fee and query in regard
38 thereat to Jeffries by Laurie were purposely made in order to obtain real information, said Crews having on former occasions deceived affiant in regard to Franklin County cases.

The issues were made up by affiant in these cases. The answer in each case a breach of warranty in the misstatement in the answer to the question are you married or single.

Affiant filed a demurrer to the answer to the Economical, stated that it failed to allege the misstatement was material.

The demurrer was argued here before Justice Miller and overruled, and judgment entered in favor of def't, Justice Miller recommending that the case be taken to the U. S. Supreme Court, and the law there settled, which was accordingly done.

In the Sup. Court affiant prepared the brief and submitted the cause, Hon. Matt. H. Carpenter arguing the same orally.

The demurrer was thereupon again affirmed, and judgment duly entered in favor of def't, Justice Miller and Clifford dissenting.

This decision virtually abolished the distinction between warranties and representations, 22 Wall., p. 47.

In the matter of the Mutual Life the defences set up in the reply aver the misstatement complained was not by the terms of the policy a *warranty*, and consequently did not avoid the policy;
39 also that the assured was fraudulently induced to sign said application by the agent, who of his own authority inserted said answer, and induced assured to sign the same without reading the same, relying upon said agent's statement that it was all right, and without any knowledge that it contained such answer.

A stipulation had been filed that Kenneday was married at the

time of the application and in fact left a widow at the time of his death. Upon the trial, the agent who was placed on the stand by plff. denied *in toto* the aforesaid expressions to Crews, and emphatically affirmed that he wrote down the answer as dictated by Kenneday and that said Kenneday signed it with full knowledge of its contents.

The court in its instruction refused the instruction asked by plff. in regard to admissions of agent, but sustained the theory that policy was not vitiated according to its own terms by any misstatement, unless material judgment was entered for plff. In due time writ of error was sued out to the U. S. Sup. Court, and the case came on then to be heard, Matt. H. Carpenter arguing the same orally for the company, and affiant submitting a brief. A judgment was thereupon rendered remanding the cause and acknowledging no distinction between the two cases, not even dignifying this
40 case with an opinion, but merely saying "reversed on authority of Jeffries vs. Economical case, 22 Wall."

Affiant then, as well as Crews, was perfectly hopeless as to the case. Necessarily this case must be retried on the law as laid down by the court, and a verdict must be rendered for the def't unless the agent will testify that the fault in inserting a wrong answer in the application was his.

This the agent had already refused to do, but testifying most emphatically to the contrary.

As said before, Crews and affiant were perfectly hopeless. In the course of a conference, Crews expressed a desire to accept $5000 in settlement and requested affiant to endeavor to obtain such terms from the company. Affiant concurred in the above, but said he would consider the case again for a few days before taking any steps towards a compromise.

As the result of his reflections, affiant concluded to change the issues by filed and amended reply, merely denying the *genuineship* of the alleged signature of Kennedy to the signature.

The application purports to be signed by Kennedy and formally attested by the agent Richards as subscribing witness.

The decision of the Supreme Court, which were however
41 prior in date to the adoption of the acts allowing parties to cases to testify even to the effect that in order to prove the execution of an instrument which was attested by a subscribing witness and denied the party execution, the same being deceased, it was absolutely necessary, in order to prove such signature, to introdnce the subscribing witness, were he alive and within the jurisdiction of the court.

This witness lived at Jerseyville, and being within a hundred miles of St. Louis was consequently within the jurisdiction of this court. I communicated the matter to Crews, he assented and I filed the amended reply, he for certain reasons and considerations, which were considered ample, agreeing to testify the cause, and

that the fee, including the management and rights under contract with the original administration, should go to affiant.

The theory upon his reply, as amended, was that said agent would not be in attendance. In which case, without some valid excuse for his absence, the plaintiff would necessarily obtain judgment; whereas, if he were present, def't would be compelled to place him on the stand in order to prove the signature to the application, which would afford ample opportunity for a thorough examination, also to impeach or contradict him.

42 The cause again came up for trial at March term, 1877, and a jury impannelled and the trial commenced, the burden of proof being on def't, a witness, professing to be familiar with the handwriting of the deceased, was placed upon the stand. Affiant, who was cause, conducting the cause solely. Crews having formally announced that he had withdrawn from the case, objected to such testimony, and the court, counsel having yielded to the point upon the production of affiant's authorities, sustained the objection, but upon the solicitation of counsel, your def't laid the case over for a few houre in order that def't might produce witness Richards, who was at Jerseyville. At the lapse of that time Richards was produced and placed upon the stand by def't, identifying himself as attesting witness and proving the signature of Kennedy.

Affiant was allowed without objection to cross-examination Richards in full in regard to the whole matter, including his alleged admissions to Crews. Witness, however, adhered firmly to his former testimony, and reiterated that Kennedy dictated the answer and signed the same with full knowledge of its contents.

Crews took the stand and was allowed without objection to state in full an interview with Richards, in which Richards stated that he assumed the fault of the mistake; that he had

43 filled up the application and had inserted the answer, "single," upon his honest belief that he was a single man, and that Kennedy had signed the same without reading it, relying upon his (Richard's) statement that "it was all right."

The instructions of the court were quite adverse to pl'ff, yet, in a few moments the jury brought in a verdict for the pl'ff, which, however, the court set aside, stating that there was no evidence to support such a verdict. The cause was again called for the trial, affiant conducting the same solely, and feeling that he had made a better case on the former trial than he could possibly expect to do again, was despondent as to the result. Crews expressed himself likewise, but affiant seeing that the counsel upon the opposite side were correspondingly jubilant, regarding the case as virtually decided in their favor, concluded to make no proposition for compromise, but to assume a bold front and trust to chances.

Upon the trial Richards, the agent, was placed upon the stand, and, as in the former trial.

The affiant placed Crews, who again stated that he had withdrawn

from the cause, upon the stand for the purpose of impeaching and contradicting said Richards.

Deft's counsel objected on the ground that, according to
44 federal decisions on cross-examination was strictly limited to matters in chief of which the other side had inquired, to wit, the *manual signature* of the deceased to the application, and that in all other matters inquired of by us we had made the witness our own, and could not consequently impeach him.

The court sustained the objection, and Crews was withdrawn from the stand without being allowed to say a word. The case was thereupon concluded, def't asking an instruction to the effect that plff. could not recover, and directing a verdict for the deft. This was refused. Def't prepared another instruction, which was not used, as will appear from the bill of exceptions. The court gave an instruction which, in effect, directed a verdict for the def't unless the jury should believe, from the evidence, that the assured was fraudulently induced to sign the application by the agent, without knowledge of its contents, and without dictating such answer. After argument the cause was submitted to the jury, and, whilst they were out, Crews and myself had a conversation, which was, to the effect, that there was no evidence before the jury on the part of pl'ff, that defendant had fully proven the signature, and consequently that there could be no other result than a verdict for the def't, and, further, that there was not a point in the case from which pl'ff could appeal with any hope.

45 To our great surprise the jury shortly brought in a verdict for pl'ff for the full amount.

The def't presented a motion for a new trial, which the court overruled, remarking at the that had set aside a similar verdict in the former trial and he would now allow the Supreme Court to do it.

A bill of exceptions was prepared by the adverse counsel and presented to me, as the counsel, for approval; a writ of error was sued out by them and the citation presented to and signed by me, and the cause was entered upon the docket and dismissed upon stipulation, signed by me as the sole counsel.

Def't also, in suing out the writ of error, had filed a bond as a supersedeas, misdescribing the corporate name of the company and conditioning the bond in favor of C.W. Jeffries, the original adm'r, long deceased.

Affiant, after the lapse of time in the which a new supersedeas bond could be filed, prepared a motion to vacate the supersedeas on account of the defects in the bond and for an execution. This motion was made by affiant of his own motion and signed by himself as sole counsel in the case.

Crews happened to be in the U. S. court at the time affiant was intending to present the motion, and affiant offered it to him, same to read, which he did, and thereupon affiant argued

46 at length in the presence and hearing of Crews. The motion was indirectly overruled and affiant referred to the Supreme Court for remedy. For reasons not necessary here counsel did not pursue this course, though he yet regards said bond as radically defective.

The writ of error was returnable to the Oct., 1878, but owing to the condition of the docket the cause would not, as client was informed, be reached for 4 years from return date.

Affiant, prompted by the interest of the estate, entered into the correspondence which has been here read, rejecting second time the offer from the company to settle the judgment at a rebate of $5,000.

At last, being so alarmed at the condition and prospects of the case, affiant presented the record and an the points in the case to some of the most eminent counsel of this bar, and their unfirm decision was to settle on the proposition offered as the case could not withstand a glance in the Sup. Court, but not only that judgment would be there entered for def't. I had written to the clerk of the Supreme Court at Washington for a printed copy of the record and received a reply that the record would not be printed until June, 1879. I knew that the record, as soon as printed, would be

47 placed by Palmer in the hands of Hon. Mat. H. Carpenter, or some other experienced practitioner of the U. S. Supreme C't.

That Mr. Palmer was merely the executive officer of the co. and the superintendent of litigation, but giving them no personal attention himself, and I felt convinced that if this printed record should be placed in the hands of the counsel designated to argue the case in the Supreme Court that the weaknesses would reveal themselves at a glance, and that the case would certainly be reversed, and most probably a judgment for def't. In order to avoid this contingency, I concluded to compromise the cause on a rebate of $5,000 from the judgment, as formerly offered, and went to N. Y. during the latter part of Feb'y, 1879, for that purpose. I brought with me the policy, on file in this court, as Palmer requested, and will here state that, on the day I left N. Y., I called into the office of U. S. clerk, calling upon Mr. Selby for the papers, stating that I wished to use the policy. By his direction Mr. Crawford, I think, procured the papers. I examined them, removed the policy, and, putting it in my pocket, left the office. Mr. Selby states that he does not recollect my expression as to the policy, nor did he understand that I wished to take the policy beyond the office; otherwise he would have given it to me and required

48 my receipt on the order of the court. Mr. Palmer I met in his office at New York, presented him the policy, and he [illegible]lled a clerk to make a computation of interest, which was sub[illegible]ted to me and found to be correct, whereupon he directed the Fran[illegible] to have a check made out for that amount. This was done

and the check presented to me for $9,401 $\frac{42}{100}$. I remarked to Mr. Palmer that the check was drawn to W. S. Jeffries, adm'r *de bonis non*, and that, while I had no authority to sign his name, I had full authority to settle this case, but that, independent of that question, the att'y of record was recognized to such an extent as having an implicit authority to compromise a case, that Ch. Jus. Marshal had decided in 7th Cranch that such a compromise would not be disturbed unless so unjust as to generally exclaimed against. He said he was familiar with the case, and at once inserted in the check, "or Jos. S. Laurie," thereby making the check payable to my order. I was not familiar or acquainted with the bank to which it was addressed, and to assist me in collecting the money he gave me a note addressed to cashier of his own bank, which was within a few doors of his office. I then deposited the money and rec'd certificate in name of Jos. S. Laurie, att'y. Mr. Palmer is mistaken in stating that I said that I desired to use the money in
49 N. York City or elsewhere. I merely said I intended to return home *via* Chicago and wanted matters in such condition that I could draw for the money at once.

I signed the necessary stipulation dismissing the case in Sup. Court of U. S. and acknowledging satisfaction.

Mr. Palmer was to dismiss the writ of error, inform me of that fact, and I was then to enter satisfaction of the judgment here. Mr. Palmer neglected to inform and I supposed he was waiting for the following Oct. term, 1879, of said U. S. Sup. Ct. Had he written me such a letter I would have at once entered into a settlement with Crews and Jeffries. He failing to write to me I would have written to him but for the fact the Franklin County judges had been committed to jail for contempt in refusing to levy a special tax in the bond cases, and my own opinion, as well the prevailing one here, that the judges would relent and that there would be a general compromise between the county and the bondholders, thereby determining exactly what the atty's fee was.

I may say, to explain, that Crews and myself were the attorneys of Flanklin County in their various bond cases, under a contract of $15,000, one-half was paid and the county court assumed to
50 cancel the contract for the remaining half without our *consent*, and I (Crews also pretending he did) declured that we would still hold the county responsible for the other half. Subsequently Crews, without my knowledge or consent, ratified this change of contract, entered into another and different contract with the county in his *own name*, whereby, among other, this Crews undertook to compromise said bonds, amounting in the aggregate to $255,000, with ten years int. at 10 per ct. on a certain basis, for which he was to receive 10 per ct. on the amount saved by compromise. Crews proceeded to act under said contract without my knowledge, and I afterwards obtained papers to show that Crews had at one time been paid, under the contract, by Fra-

court the sum of $4,000, $325 of which was alleged to be for printing. Affiant has been informed that Crews has obtained, under the contract, several thousand dollars in addition. Affiant has received no information from said Crews whatever in regard to this change of contract, or of a single dollar rec'd by him under the same. On the contrary, his conduct has been deceitful, surreptitious and with the intent of defranding this affiant, who, during all this time, has remained perfectly silent, awaiting the proper opportunity.

51 Therefore the affiant hesitated as he did, thinking, as he did, that a few days or weeks would develop everything and show the exact amount of Crews' fee and the amount paid when Crews withdrew from this case. It was agreed between us that whatever fee received by me should be accounted for in connection with the Franklin County fees.

The above is no vindication of myself for the apparent delay.

As soon as I returned to St. Louis and obtained possession of the money from them, I set apart the share belonging to the estate under the contract and placed it in the hands of a third party, with a written statement of the whole matter with instructions as to payment. The money is yet there. This written statement was made upon the contingency of death.

During the time when the writ of error was sued out in 1877 up to the 13 Dec., 1879, Crews, altho' meeting me on divers occasions, never manifested any interest in this case, nor did he ever make a single inquiry thereof until the 13th day of Dec., 1879; in the afternoon we met in the office of Angus Cameron, att'y at law, on the S. E. cor. of 5th and Pine. Crews asked me to explain a letter which he had rec'd from the clerk of the U. S. Supreme in regard to the dismissal and compromise of the Jeffries case, a letter

52 he had received that morning. I replied, stating how the compromise had been made, the amount received, and the further that I had the money due the estate in the hands of a third party, and would pay over to him at once as the individual att'y of his father-in-law upon a proper receipt. He asked me why I had concealed the matter. I replied that I wanted to see a settlement of the Franklin County cases. I told him that if he questioned it I would show him that it was absolutely that amount saved, and invited him around to my office, on Monday to examine all the papers and letters. He made no reply, and rose to his feet apparently excited, and said repeatedly that no one could have convinced him that I would have treated him so. He did not complain of the settlement, but was grieved, as he professed, at the manner in which I had treated him. I replied, Col., this is no place to discuss private matters; I have done nothing but what was right, and what I would do again. He made no reply, but started to leave the office. As he reached the outer door I called out to him again if Frank would come to my office Monday. He replied in a mysterious,

threatening manner that I should see him somewhere abouts. I at once followed him out into the hall, remarking that he was excited then, but if he would call at my office we could talk the matter over, and his recollection would be refreshed. He again replied in the same manner, to which I replied if he wanted to act
53 honestly he would come to my office, but if he preferred any other course he would always find me prepared. The next thread of the matter was that there was a motion filed in this court. If the adm'r *de bonis non* had been an independent or disinterested man, I would have gone to him at once and paid over the money of the estate, but I knew that altho' Mr. Jeffries had always borne the highest character for honesty and integrity, that Crews' influence over him was such that he would in honest simplicity accept every statement as true and act accordingly.

As to the affidavit of C. S. Jeffries filed herein, the affiant has no intention of impugning his veracity or accusing him of falsehood, but he alleges "that he has no recollection of ever having communicating with said Laurie in any manner regarding this suit." Mr. Jeffries may not recollect it, but this affiant asserts it, nevertheless, to be a fact that Mr. Jeffries has certainly conversed with him several times about this case and its progress, recognizing affiant as of counsel in the case.

As to the affidavit of Crew, his statement that he has continued to act as att'y in this case is untrue.

His statement that, "to the best of his knowledge ond belief, all instructions given by plff. as to the management of said cause have made through and to him individually and not to any other
54 attorney or person whatsoever, is ambiguous, probably intentionally so, but so far as it means that this affiant has not entirely managed and controlled this case in court, making every pleading, motion, and argument therein, it is false.

His statement that he never authorized by me to make any settlement is immaterial, because my authority was not derived, yet is true as heretofore alleged that he has expressed a desire to compromise and suggested that I procure the terms from the company. His statements that he withdrew from the cause at the second and third trials was merely formal, and that he continued throughout as att'y in this case is also false.

The statement that he has reason to believe that the original adm'r has never conversed the original adm'r, has never conversed nor counseled with affiant in regard to this cause, is, as affiant believes, merely inserted to meet the exigencies of his case and without any foundation whatever.

The only notice which affiant received from Crews in regard to his refusal to ratify the settlement was the copy served on me by the marshal.

This statement that no part of any money which was
55 ceived by said Laurie was ever tendered to him, is del
ately false; on the contrary he well knows that I offere

the share of the estate in the money rec'd at the interview of Dec. 13th, 1879, and that I renewed the offer on Monday to his att'y, Col. T. Thoroughman.

In conclusion, affiant states he has been throughout this cause actuated by the interest of the estate, and shown the utmost zeal in its behalf. That the compromise which he effected was most highly advantageous to the estate, and one upon the advisability of which he, prior to the settlement, had carefully counseled with the best attys. in the city, who unanimously advised the compromise from the record. Mr. Shepley recently remarked to this affiant that he could not see on what possible ground the company compromised the case, and that, in his own opinion, the case could not possibly stand in the Supreme Court.

Affiant, in conclusion, submits to the court that he has acted in good faith for the best interest of the estate; that the company has likewise acted honestly, but this motion is not an honest effort to set aside the satisfaction of the judgment in the interest of the estate, but a sinister design of T. W. B. Crews to obtain possession of the fee which I have fairly and exclusively earned, and
56 to which I am so well entitled.

JOSEPH S. LAURIE.

Subscribed and sworn to before me, this 12th day of January, 1880.

M. M. PRICE, *Clerk.*
By T. L. CRAWFORD, *Deputy.*

57 *Exhibit to Laurie's Affidavit.*

C. S. JEFFRIES, ADMINISTRATOR DE BONIS NON of the Estate of A. Kennedy, dec'd,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF New York.

Plaintiff states that the above suit was originally instituted by Charles W. Jeffries, as administrator of the estate of Allan A. Kennedy, dec'd, and that during the pendency of the same in this court, to wit, March 21st, 1873, the death of said Charles W. Jeffries, adm'r as aforesaid, was suggested, and upon order of this court, the present plaintiff, C. S. Jeffries, as administrator de bonis non, was substituted as plaintiff in said cause, and that the same has ever since been prosecuted and conducted in his name as plaintiff.

That upon the 8th day of October, 1877, a trial was had therein, and verdict and judgment rendered in favor of said plaintiff in the sum of $13,345.

That defendant, on the 27th day of Oct., 1877, sued out a writ of error in said cause, returnable to the October term, 1878, of the Supreme Court of the United States.

That on said day, for the purpose of effecting a supersedeas and stay of execution, pl'ff in error tendered to this court a bond, with sureties in the sum of $17,000, which bond was filed and approved and an order of supersedeas made.

Now comes plaintiff herein and moves the court to set aside said order of supersedeas and issue execution at once upon said judgment, for the following reasons:

1st. Said bond is in favor of, and conditioned for the benefit of, not the adverse party in this suit, as required by law, but *C. W. Jeffries*, adm'r, who long since, as above set forth, ceased to be party to this action.

2nd. Pl'ff in error is described in said bond as the "Mutual Life Insurance Company," instead of its corporate name, "The Mutual Life Insurance Company of New York."

JOS. S. LAURIE,
Att'y for Pl'ff.

(Endorsed:) Filed Mar. 26, 1878. M. M. Price, clerk.

59 And afterwards, to wit, on the 14th day of January, A. D. 1880, the following affidavit of T. W. B. Crews was filed in said cause, said affidavit being in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

Affidavit of T. W. B. Crews for Petitioner.

C. S. JEFFRIES, ADM'R DE BONIS NON OF THE estate of Allan A. Kennedy, dec'd, Pl'ff.,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York, Deft.

On motion of plaintiff to vacate entry of satisfaction of judgment.

This affiant, T. W. B. Crews, being duly sworn, on his oath says that he never induced Charles W. Jeffries to administer on the estate of said Kennedy, nor did he agree with Joseph L. Laurie that he would do so; and states that all stated by said Laurie in his affidavit filed herein in that connection or to that effect is untrue. That said Kennedy and his wife were Roman Catholics, and that after the death of said Kennedy his wife came on here from Elmira, New York, and his nephews from Canada, and at once con-
60 sulted James Halligan, Esq., lately deceased, a prominent lawyer of Union, in Franklin County, who was also a member of the Roman Catholic church, and by his advice the said wife and nephews requested said Charles W. Jeffries to administer

being supposed at the time that said estate was worth fifty thousand dollars or more, and a large bond being required, and there being but few persons in that vicinity able to give such bond, from that time and to his death, in August, 1879, the said Halligan and affiant represented the said administrator and his successor, the plaintiff herein, in all legal matters pertaining to said administration in the courts of Franklin County; that said insurance policies were handed over to affiant some time in the fall of the year 1871, at a time when said Laurie & Crews were partners in the practice of law in the city of St. Louis, and suits were instituted by them thereon in the Circuit Court of St. Louis County about the month of December, 1871; that the history of said suits is shown by the records thereof, and from which it appears that, in the case against the defendant herein, plaintiff had three times obtained a verdict in his favor, and that judgment had finally been rendered in this court against defendant, which this court had refused
61 to set aside, and that defendant had taken up the case by writ of error to the Supreme Court of the United States, where it was pending when this pretended compromise was entered into; that at no time did affiant despond of a recovery of said judgment, or ever in any way consent with said Laurie or any one else as to a compromise thereof; nor was affiant ever authorized by the said Charles W. Jeffries nor by the said plaintiff herein to compromise said claims, nor suits, nor judgments, nor was the subject of compromise ever mentioned by him to them, nor either of them, nor by them, nor either of them to him, nor did he promise the said Laurie anything whatever in respect thereto; that said Laurie did at one time some year ago, affiant cannot recollect the time, speak to affiant as to the fee in this case, and affiant said to him that it would have to be allowed by the probate court, but that he had no doubt of a liberal allowance. That said Charles W. Jeffries died in January, 1873, after a long sickness and before the first trial of this cause, and if he had any such conversation with said Laurie, as is mentioned in his affidavit, affiant never before heard of it; and affiant believes the said Charles W. Jeffries
62 was too well advised of his duty in respect to such matters, and too prudent to have thus assumed a personal responsibility of such consequence, even for a consideration, and in this case there would have been none at all adequate.

Affiant further states that after the bringing of said suits, said Laurie having involved affiant in matters growing out of their partnership, at the instance of affiant their partnership was dissolved on the 26th day of July, 1873, and therefore it is not true as stated by said Laurie, that their partnership continued until 1876 or 1877; that affiant consented however for said Laurie to continue in certain cases then pending so as to give him an opportunity of working out and paying back money which he had improperly used and for the fragment of which, by reason of their partnership relation, affiant was bound.

Affiant further states that he personally argued the case against the Economical Insurance Company in the Supreme Court of the United States, that being the first reached, and assisted in making the briefs in both cases, and otherwise did his full duty, so far as he was capable to his client in respect thereto, as is more fully set forth in affiant's first affidavit; that as to the motion on the supersedeas bond referred to by said Laurie, as before stated, his
63 attention was not called to the fact that the same had been signed by the said Laurie alone, nor did he suspect the said Laurie of any improper designs, nor had he any recollection of having seen the motion at all; that when the cause was taken up to the Supreme Court, affiant felt assured that it would not be reached for two or three years and so assured the plaintiff, and was resting satisfied with respect to it until a view of getting a printed copy of the transcript he applied by letter dated Dec. 3rd, 1879, to the clerk, Mr. Middleton, for information concerning the case and learned for the first time by his answer, heretofore filed herein, that the writ of error had been dismissed in March last. Upon stipulation filed in said court and signed by Jos. L. Laurie, att'y for defendant in error, and O. H. Palmer, plff's att'y, a certified copy whereof, of the order of dismissal, is hereto attached.

That as respects to the case of the Franklin County bonds, referred to by said Laurie, while in no way pertinent to this proceeding in the opinion of affiant, he begs leave to state the facts as shown by the records, a certified copy of which is hereto attached; that on the 5th day of July, 1871, the county court of said
64 county made an allowance, a copy of which is hereto attached, of $7,500.00, being in the language of said order as follows: "Being in full for professional services in the matter of the Franklin County bonds issued to Budd & Decker on account of the Union and St. Louis County line road, being for past services, and that one warrant issued on county treasury for same; also $7,500.00 for services in appeal to the Supreme Court of the United States, but no warrant to issue for same until further orders." This order was made in behalf of Crews, North & Laurie, Crews, Letcher & Laurie (by inadvertence the name of Crews seems to be left out in naming Crews, Letcher & Laurie), and Ewing and Holliday, who were attorneys employed by plaintiffs, or engaged in their behalf, in the case of Steins *et al. vs.* Franklin County *et al.* And affiant states that a warrant for said first-mentioned sum of $7,500 was issued and delivered at the time to him, by agreement with the county court was exchanged for county bonds of $500 each, and which bonds affiant equally divided, giving to said Laurie, who had done no service of any consequence, if any at all, in respect to said suit, three of said bonds, to North's estate (North having previously died) three bonds, to Letcher three bonds and to Ewing three bonds, and keeping three himself, a-
65 charging each of said parties for some expenses incurre

That on the 6th of July, 1871, being the next day after the making of said order, the said county court made the following order: "It is ordered by the court that part of an order made by the court July 5th, 1871, and recorded in Book 'M,' page 124, wherein Crews and others are allowed $7,500 for fees in advance for services in appeal to the Supreme Court of the United States, be and the same is hereby rescinded and declared null and void."

That the last order was made after affiant had left Union, and without his knowledge or consent

That said suit of Steines *et at. vs.* Franklin County *et al.* was decided adversely to said county in the Supreme Court of the United States, and no effort was made by any of said attorneys so far as affiant knows to recover said balance of $7,500 or any fee whatever from said county, and no money was ever paid by said county to any attorney for fees on account of said cause, nor account of the cause of Richie *vs.* Franklin County of similar import, so far as affiant remembers or has any knowledge. That long afterwards, and more than a year after the dissolution of said copartnership between affiant and Laurie, and after the county had been sued by holders of said bonds, to wit, on Sept. 21, 1874, affiant was
66 employed to defend the county, and was to be paid a percentage upon all sums saved to the county in said suits; a copy of his contract is hereto attached. Affiant states that said Laurie has no interest whatever in said last contract, and never had, and never performed any services therein, as he well knows.

That as to any agreement between said Laurie and this affiant to the effect that whatever fees were received by him in this case should be accounted for in connection with the Franklin County cases, affiant says that he never before heard of it, and that it is unreasonable as well as wholly untrue; that he was not indebted to said Laurie, and is not now in any manner or sum whatever.

With reference to the conversation had between Laurie and affiant, on the evening of Dec. 13, 1879, affiant says that he had been trying to find said Laurie for two days to ascertain what he knew about the dismissal of the writ of error in the Supreme Court, and that he approached him with the letter of Mr. Middleton in his hand and stated the contents to him, when Laurie replied that he had settled the case last spring. Affiant asked him by what authority he settled, and for the particulars, and he answered that he had the power as attorney to compromise, and had compromised
67 for $9,000, defendant to pay the costs, and added that he had the money yet. Affiant disputed his authority, and stated that it would not be ratified, and Laurie answered that he had a decision of the Supreme Court of the United States on the subject giving him the power to compromise, and that he had done the best thing possible for the plaintiff, and that affiant would think better of it when he was less excited. Affiant asked him why he had not mentioned the matter to him or to Mr. Jeffries, and he replied that affiant had

nothing to do with the case, that he was not an attorney in it, and further said that he was waiting for the Franklin County bond suit to be determined; that affiant had consented to the action of Franklin County in refusing to pay the balance of the fee allowed us, and he proposed to hold on to this money until that matter was settled. Affiant denied his statement, and asked him what that matter had to do with Kennedy's estate, and he answered that he considered Mr. Jeffries and affiant as one. Affiant told him that he could not have been made to believe that he would do such a thing, and that he would not have believed he would treat him in such a manner, when Laurie replied that he would do so again, and affiant left him; that Laurie followed him into the hall and
68 asked him to come to his office on Monday, but affiant refused, and told him if he wanted to see affiant he knew where his office was, and further remarked that he intended to have execution issued against defendant. Affiant does not attempt to give the exact language, but gives it as nearly as his memory serves him. Affiant states that it is not true, as stated by said Laurie, that he then, or ever at any other time, tendered affiant any money or offered to pay any money to him or to affiant for plaintiff on account of said compromise, nor has he yet done so.

And affiant says that he has no knowledge or information sufficient to form a belief as to whether said Laurie deposited one-half of the money so received by him on account of said compromise in the hands of a third party as stated by him, but says that if he did so deposit it, there was no necessity for such a course, if he was in fact authorized to compromise as he pretends, as Mr. Jeffries was near at hand and he could and ought to in such a case to have paid it over promptly to him; that if he did so deposit one-half of it, it is still under his control and not within reach of the plaintiff or his attorney, and may at any time be made way with; that affiant is informed and believes that said Laurie
69 is insolvent, and has no property out of which this money could be made; and that in compromising or attempting to compromise said cause, affiant believes from all the circumstances and the conduct of said Laurie, he was actuated more by a desire to get hold of the money than to serve the plaintiff.

T. W. B. CREWS.

Sworn to and subscribed before me, this 14th day of January, A. D. 1880.

CHARLES M. STEPHENS,
[SEAL.] *Notary Public, City of St. Louis, Mo.*

70 U. S. Supreme Court.

THE MUTUAL LIFE INSURANCE COMPANY OF New York, Plaintiff in Error,
vs.
CHAS. S. JEFFRIES, ADM'R, &C. OF ALLAN A. Kennedy, dec'd, Def't in Error.

No. 672. October Term, 1878

Authority of Plff. in Error to Dismiss. Exhibit to Crews' Affidavit.

It is hereby stipulated and agreed that the above-entitled action may be dismissed from the docket of this court without costs to either party as against the other.

New York, Feb'y 14th, 1879.

JOS. S. LAURIE,
Att'y for Defendant in Error.
O. H. PALMER,
Plff's Atty.

True copy. Test:
D. W. MIDDLETON,
[SEAL.] *Clerk Supreme Court U. S.*

71 *Dismissal of Writ of Error. Exhibit to Crews' affidavid.*

Supreme Court of the United States, October term, 1878.

THE MUTUAL LIFE INSURANCE COMPANY,
Plaintiff in Error,
vs.
CHARLES S. JEFFRIES, ADM'R OF ALLAN KENNEDY,
deceased.

In error to the circuit court of the United States for the Eastern District of Missouri.

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Eastern District of Missouri, and on the authority of counsel for the plaintiff in error on file and motion of Mr. P. Phillipsin, behalf of counsel.

It is now here ordered and adjudged by this court, that the writ of error in this cause be, and the same is hereby, dismissed, each party paying their own costs.

11th March, 1879.

[SEAL.] True copy. Test:
D. W. MIDDLETON,
Clerk Supreme Court U. S.

72 In the Franklin County Court, Oct 6th, 1874.

Contract between Crews & Franklin County. Exhibit to Crews' affidavit.

It is ordered that the following be made a matter of record, to wit: This contract and agreement made and entered into this 21st day of September, 1874, by and between T. W. B. Crews, party of the first part, and Franklin County, of the State of Missouri, party of the second part—

Witnesseth, that the said Crews hath contracted and agreed with said county that he will skillfully and faithfully and diligently, as attorney for said county, defend the said county in the suits of the Franklin's Bank of Belleville, plaintiff, against the county of Franklin, defendant, and in the suit of the Fourth National Bank of St.

Louis, plaintiff, against the county of Franklin, defendant, in the Circuit Court of the United States for the Eastern District of Missouri, in which said court said suits are now pending, and in all other courts or places whatsoever to which said suits may be removed, either by the plaintiff therein or by the defendants therein, whether such removal be by a change of venue or by appeal or by writ of error, and to defend said suits to final judgment in the court of last resort, and likewise to defend said county against all suits now pending or that may be hereafter instituted to enforce
the payment of the bonds or coupons issued by the County
73 Court of Franklin County to Budd and Decker for county road from Union to St. Louis County line. In consideration of which services so to be rendered of said Crews, the said county of Franklin hereby contracts and agrees to pay said Crews the sum of five hundred dollars upon the determination in said court of the causes now pending in the United States circuit court, and five hundred dollars upon the determination of said cases if appealed or removed by either party to the Supreme Court of the United States, and the further sum of ten per cent. on all sums on which payment by the county of Franklin is prevented and successfully resisted, and said county further agree to pay said Crews from time to time all sums of money actually and necessarily expended by him in the defence of said suits that are now pending or may hereafter be instituted for the collection of said bonds and coupons, or any costs that he may advance in that behalf. It is understood and agreed by and between the parties hereto that in the event said ten per cent. is paid to said Crews, the one thousand dollars and the expenses advanced shall be deducted from the same.

And the said county upon its part further contracts with the said
Crews that it will not voluntarily pay, agree for, or cotract
74 to pay said bonds or coupons, or any part thereof, without the written consent or written advice of said Crews first obtained. And that said Crews may take and have control and management of said suits on behalf of the said county, and that even if judgments are obtained against said county in the courts of last resort, the said Crews is to have and is hereby given the management of the defence to the payment of the same.

In testimony whereof the said Crews hath hereunto subscribed his name this the day of the date hereof; and the said county of Franklin, by its agent, Charles P. McCune, acting under and by authority of an order of record of the county court of said county of even date herewith, hath also by its said agent subscribed the same, and this contract is by the parties thereto executed and subscribed in duplicate.

T. W. B. CREWS,
Party of the first.
FRANKLIN COUNTY,
Party of the second part, by its authorized agent aforesa:
CHAS. P. McCUNE.

Approved this 21st day of Sept., A. D. 1874.

W. P. SPRINGGATE,
Presiding Justice Co. Ct.

75 STATE OF MISSOURI, } ss.
COUNTY OF FRANKLIN, }

I, Chas. P. McCune, clerk of the County Court within and for the county of Franklin, state aforesaid, do hereby certify that the within is a true, full, and complete copy of the original contract made on 21st day of September, A. D. 1874, and entered upon record on the 6th day of October, A. D. 1874, as fully as the same appears now of record in my office.

In testimony whereof I have hereunto set my hand and the seal of the county court, at office in Union, this 15th day of October, A. D. 1877.

[SEAL.]

CHAS. P. McCUNE,
Clerk County Court.

76 STATE OF MISSOURI, } ss.
COUNTY OF FRANKLIN, }

Orders of Franklin County Court, &c., to pay Crews and others, &c. Exhibit to Crews' Affidavit.

In the county court of said county at and during the July term, 1871, of said court, and on the 5th day of July, 1871, the following among other proceedings were had, viz:

It is ordered by the court that Crews, North & Laurie, Letcher, Laurie & Ewing and Holliday be allowed seven thousand five hundred dollars ($7,500), being in full for professional services in the matter of the Franklin County bonds issued to Budd & Decker on account of the Union and St. Louis County line road, being for past services, and that one warrant issue on county treasury for same; also $7,500 for services in appeal to the Supreme Court of the United States, but no warrant to issue for same until further orders.

And afterward, at the same term of said court and on the 6th day of July, A. D. 1871, the following among other proceedings were had, viz:

"It is ordered by the court that part of an order made by this court July 5th, 1871, and recorded in Book 'M,' page 124, wherein Crews and others are allowed $7,500 for fees in advance for services in appeal to the Supreme Court of the United States, be and
77 the same is hereby rescinded and declared null and void."

STATE OF MISSOURI, } ss.
COUNTY OF FRANKLIN, }

Cert. of Clerk Franklin County Court. Exhibit to Crews' Affidavit.

I, Chas. F. McCune, clerk of the County Court of the county of Franklin, in the State of Missouri, hereby certify that the above

and foregoing are true copies of all the orders of the said county court relating to the allowance of fifteen thousand dollars as attorneys' fees to Crews, North and Laurie, and Laurie and Letcher and Ewing and Holliday, and that there is no other matter of record in the records of said county court relating to the allowance of fifteen thousand dollars as such counsel fees, and that the said records do not show any contract between the parties in said order mentioned, or any of them, and the said county to pay fifteen thousand dollars for their services as attorneys for the said county in the case referred to in said orders.

In testimony whereof I have hereunto set my hand and affixed the seal of the County Court of the county of Franklin, in the State of Missouri, at my office in Union, Missouri, on this the 8th day of January, A. D. 1880.

[SEAL.] CHAS. T. McCUNE,
Clerk of the County Court of Franklin County, Missouri.

78 And afterwards, to wit, on the 14th day of January, 1880, the following affidavit of A. P. Selby was filed in said cause which said affidavit is in words and figures as follows, to wit:

Affidavit of A. P. Selby for Petitioner.

In the Circuit Court of the United States for the Eastern District of Missouri, *ss.*

C. S. JEFFRIES, ADM'R DE BONIS NON OF THE Estate of Allan A. Kennedy, dec'd,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York.

On motion of plaintiff to set aside and expunge the entry of satisfaction of judgment in said cause.

A. P. Selby, being duly sworn, on oath says, that he is chief deputy of the clerk of the circuit court for the Eastern District of Missouri, and that he is familiar with the records of the said court in the above entitled cause; that the entry of satisfaction made in this cause on the 15th day of December, 1879, by Joseph S. Laurie as attorney for plaintiff, was made during the term of this court, in the clerk's office, but without leave of said court having been first had and obtained, and that no record of said entry of satisfaction was made, nor was it mentioned on the minutes of the court, nor was any record whatever, other than that on the margin of the
79 judgment, made of said entry, nor has it yet been made.

That at the time said entry of satisfaction was made, said Laurie requested that the fact that said entry of satisfaction had been made on the record, should not be given to the reporters of the press, assigning as a reason therefor that he wished first to have a settlement with Mr. Crews. Affiant further states that the original

policy of insurance filed in said cause and upon which said action was founded, has been withdrawn by some one from the files of this office, and, to the best of affiant's recollection and belief, without his knowledge or consent, and so far as he knows, without the knowledge or consent of any one in his office outhorized to give such consent. That he did not know that said paper had been withdrawn until after the satisfaction of judgment had been entered. That he remembers Mr. Laurie's having called into his office and requested to see said papers, but did not understand Mr. Laurie to express a wish to withdraw any of said papers from the office, and that to the best of his knowledge and belief no receipt for said paper and no copy thereof is now or has ever been left in his office.

A. P. SELBY.

Subscribed and sworn to before me this 14th day of January, 1880.

M. M. PRICE, *Clerk.*
By T. L. CRAWFORD, *Deputy.*

80 And afterwards, to wit, on the 14th day of January, A. D. 1880, the following affidavit of Thos. Thoroughman was filed in said cause, which said affidavit is in words and figures as follows, to wit:

Affidavit of Thos. Thoroughman for Petitioner.

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADM'R DE BONIS OF THE Estate of Allan A. Kennedy, dec'd,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York.

Thomas Thoroughman, being duly sworn upon oath, says: That he is a practicing lawyer and resides in the city of St. Louis, Mo., that shortly after this motion was filed in this proceeding, he met Joseph S. Laurie on 5th street, at the office entrance of affiant, when some conversation took place in relation to this controversy, and, among other things, Mr. Laurie said, "I see you are one of the attorneys against me, and I am glad of it," adding some pleasant expressions as to our friendship.

Mr. Laurie then said that he had taken and put away the money that he had received in the settlement of the suit, and with
81 it a memorandum in writing explaining the entire transaction, so that, in the event of his death, the matter could rightly be adjusted, and that he intended to keep it until there was a settlement between himself and Col. Crews concerning matters growing out of litigation in or with Franklin County. This is all

that Mr. Laurie said to affiant concerning the disposition of the money.

He also said that he was willing to make a settlement with Col. Crews, but I certainly did not understand Mr. Laurie at any time offering or making me a tender of the money.

THOS. THOROUGHMAN.

Subscribed and sworn to before me, this 14th day of January, A. D. 1880.

[SEAL.] CHARLES M. STEPHENS,
Notary Public City of St. Louis, Mo.

And afterwards, to wit, on the 15th day of January, A. D. 1880, the following affidavit of O. H. Palmer, with exhibits attached thereto, was filed in said cause, in words and figures following, to wit:

82 United States Circuit Court for the Eastern District of Missouri.

C. S. JEFFRIES, ADMINISTRATOR, &c., OF ALLAN A. Kennedy, deceased,
against
THE MUTUAL LIFE INSURANCE COMPANY OF NEW York.

STATE OF NEW YORK,
CITY AND COUNTY OF NEW YORK, } *ss.*

Affidavit of O. H. Palmer and Exhibits thereto.

Oliver H. Palmer, of said city, being duly sworn, says that he resides in the city of New York. That he is solicitor and chief counsel of the Mutual Life Insurance Company of New York, and has had the charge and direction of the defence in the above-entitled action. That said action was commenced in the fall of 1871 at St. Louis, Mo., and was brought to recover the amount of a policy of insurance for ten thousand dollars on the life of Allan A. Kennedy, deceased.

The case was first tried in November, 1873, and judgment obtained against the said company, and appeal was taken by the company to the United States Supreme Court, which appeal was argued in February, 1876, and the said judgment was reversed on said appeal and a new trial ordered. The said case was tried
83 again April, 1877, and a verdict on the second trial was found against the company, which was set aside and another trial ordered, and the action was tried for the third time in October, 1877, with a like verdict against the company and judgment entered thereon; that an appeal was also taken from the last-named judgment to the Supreme Court of the United States, and was

pending in said Supreme Court at the time of the settlement of the case hereinafter mentioned.

The deponent further says that the company was not anxious to settle or compromise the case; but upon the application and original request of the plaintiff, through his attorney, Joseph C. Laurie, a proposition for compromise, with a view of avoiding further annoyance and expense of litigation, was submitted. That annexed hereto, marked "A," is a letter addressed to deponent by Mr. Laurie, dated May 16th, 1878, and received by deponent in due course of mail. Not replying to said letter, said Laurie wrote deponent again on the 7th of June, 1878, the letter hereto annexed, marked "B," and deponent replied to said letters on the 12th of June, 1878, and his reply, a copy of which is hereto annexed, marked No. 1. That deponent received another letter from said Laurie, dated October 19th, 1878, and which is hereto an-
84 nexed, marked "C." That deponent replied to said letter on the 22nd of November, 1878, and annexed hereto is a copy of said reply, marked No. 2. That about the last of November, 1878, deponent received another letter from said Laurie, dated November 29th, which is hereto annexed, marked "D."

Deponent, in answer to said letter, informed Mr. Laurie that, after consultation with the president, he was compelled to decide proposition; that on the 29th of January, 1879, deponent received a further letter from Mr. Laurie, dated January 26th, 1879, which is hereto annexed, marked "E"; that on the 29th of said January deponent replied to said last-named letter; annexed hereto, marked No. 3, is a copy of his reply; that about the 6th of February, 1879, deponent received another letter from said Laurie under date of February 3rd, 1879, which is hereto annexed, marked "F"; that deponent replied to said last-named letter on the 6th of January, 1879; and annexed hereto, marked No. 4, is a copy of his reply; and deponent further says that, subsequent to the date of said last-named letter, to wit, on the 14th day of February, 1879, the said attorney, Mr. Laurie, called upon deponent personally,
85 at his office in New York, and stated to deponent that he was ready to make the compromise; and, thereupon, the said Laurie presented to deponent the original policy of insurance in question; and deponent prepared and attached thereto the proper voucher, which now appears upon said policy, and ready to be produced; which was executed, as appears thereby, and delivered to said deponent; and deponent thereupon caused a check to be drawn for the sum of $9,401 $\frac{42}{100}$, (nine thousand four hundred and one dollars and forty-two cents,) and which was made payable to the order of Charles S. Jeffries, administrator of Allan A. Kennedy; but deponent, at the request of said Laurie, and upon his assurance that Mr. Jeffries was fully cognizant of all the facts, and that he was acting with full consent of said Jeffries, and that it was necessary to use the money in the city of New York without the

delay of sending forward the check for the endorsement of said Jeffries; and deponent, relying upon said assurances, and in the belief that the said Laurie was fully authorized and empowered to act in the premises, consented to add, after the words "pay to the order of Charles S. Jeffries, administrator of Allan A. Kennedy," the words "or Jos. S. Laurie, Att'y."

86 And deponent further says that the said company had every reason to believe, and did believe, that said Laurie was fully authorized and empowered to compromise said claim, and only consented to such compromise after repeated requests on the part of said plaintiff through his attorney.

And deponent further says that no doubt was entertained on the part of the company as to the full authority of said Laurie to compromise the claim, until its attention was called to the matter a few weeks since by a letter from T. W. B. Crews.

And deponent thereupon, and afterwards, informed said Crews that it did not care to insist upon the compromise, but would consent to reinstate the case on the calendar upon the return of the money actually paid to the said plaintiff through his attorney, with interest from the time of such payment.

And deponent now, on behalf of said company, offers to reinstate said case and waive the compromise upon the return to the said company of the money so paid and advanced, with lawful interest thereon.

O. H. PALMER.

Subscribed and sworn to, this 2nd day of Jrnuary, 1880, before me.

GEO. F. DEMAREST,
Notary Public, Kings Co.

Cert. filed in N. Y. Co.

87 "A."

LAW OFFICE OF JOS. S. LAURIE,
521 Olive Street,
ST. LOUIS, *May 16th*, 1878.

HON. O. H. PALMER,
Att'y-at-Law, New York City.

SIR: In obedience to your suggestion to present in writing any propositions in regard to the case of the Mutual Life Insurance Company of New York, plaintiff in error, vs. C. S. Jeffries, adm'r of estate of Allan Kennedy, dec'd, defendant in error, now pending in Supreme Court of United States, on writ of error returnable to the Oct. term, 1878, of said court, I propose that we submit said cause to the court on printed arguments during the first thirty days of said term, in accordance with the provisions of the first paragraph of Rule 20 (twenty) of the Supreme Court. In case you so agree I will be willing, provided the judgment is affirmed, to pay the costs of the transcript and of the Supreme Court.

In lieu of this I further offer to deduct $2,500 from the amount which may be due on the judgment here, conditioned upon a prompt settlement. I trust that one of these propositions may receive your favorable consideration and that you may soon advise me upon the subject.

Respct'y,
JOS. S. LAURIE,
Att'y for Deft. in Error.

88 "B."

LAW OFFICE OF JOS. S. LAURIE,
521 Olive Street,
ST. LOUIS, *June 7th*, 1878.

HON. O. H. PALMER,
Att'y-at-Law, New York City.

On May 16th I wrote you submitting two propositions with reference to case of Jeffries, Admr., vs. Mut. Life Ins. Co., understanding this course to be in accordance with your suggestion. My letter has received no recognition, still I hesitate to think that you intend to award me no notice, and I now write merely for the purpose of assuring myself in this regard.

Very respectfully,
JOS. S. LAURIE.

89 No. 1.

JUNE 12TH, 1878.

JOS. S. LAURIE, Esq.,
521 Olive st., St. Louis, Mo.

DEAR SIR: I owe you an apology for not replying to your letter of the 16th of May relating to the Jeffries case, but the constant pressure of current business is very apt to delay immediate action on what can be postponed. In respect to your suggestions for submitting the cause to the court printed argument, I find, upon consulting the counsel who is to make the argument in the Supreme Court, that he is not prepared at present to advise such submission. His present impression is that the case should be argued orally. He is to give the matter further consideration, and as there is ample time before the October term for such consideration, I do not feel justified therefore in giving you a definite answer at this time. I prefer myself that there should be an oral argument, unless the counsel readily acquiesces in the proposition to submit the case upon printed briefs.

I should not myself justified in urging it. I think I have heretofore suggested such terms as I thought were fair for the purpose of ending the litigation, and regret that you have not felt at liberty to tak the same view.

90 The proposition you make does not seem to me sufficiently liberal to justify its acceptance, and, as we are not able to

agree, perhaps the best way would be to let the case take its regular course. Yours truly,

O. H. PALMER,
Solicitor.

Copy.

91 "C."

LAW OFFICE OF JOS. S. LAURIE,
521 Olive street.

SAINT LOUIS, *Oct. 19th*, 1878.

O. H. PALMER, Esq., New York.

DEAR SIR: Your letter of June 12 in reply to my proposition to submit the case of Jeffries, adm'r, vs. Mut. Life Ins. Co. to the Supreme Court, on brief, within the first 90 days of the term, in accordance with provisions of rule, was to the effect that counsel was not then prepared to advise such submission, but that he would consider the matter and you would give me a definite answer.

Your failure to do so is, I presume, equivalent to a refusal. I confess my anxiety to have an early adjudication of this case, and, therefore, write again to say that I am willing to offer any reasonable inducement in order to secure your consent to a submission under the rule. There is yet ample time, and I ask that you write me, stating on what terms you will be willing to submit the case. An early answer will oblige, yours respectfully,

JOS. S. LAURIE.

92 No. 2.

NOVEMBER 22ND, '78.

JOS. S. LAURIE, Esq.,
521 Olive street, St. Louis, Mo.

DEAR SIR: I am in receipt of your favor under date of October 19th, as the letter has just come to hand. I infer the date should have been November 19th. If there must be an argument of the case in the Supreme Court of the United States, which I had hoped to avoid, I prefer it should be an oral one. If you feel at liberty to adopt the suggestion heretofore made by me, and which was the most favorable one I could get authority to submit, namely, to pay the claim, less a rebate of $5,000, I should be very glad to close the controversy. I had hoped, upon reflection, and in view of all the circumstances of the case, you would conclude to settle it upon such terms, but I have no desire to urge it upon you or do more than to say that if you should submit such a proposition I will still recommend its acceptance.

Yours truly,

O. H. PALMER, *Solicitor.*

93 "D."

LAW OFFICE OF JOS. S. LAURIE,
521 Olive street,
SAINT LOUIS, *Nov. 29th*, 1878.

O. H. PALMER, Esq.,
New York City.

DEAR SIR: Yours of the 22d inst. is before me. I have delayed answering thus far for the purpose of consultation and reflection.

You propose, in the case of Jeffries, Adm'r, vs. The Mutual Life Ins. Co. of New York, "to pay the claim, less a rebate of $5,000." In order to close this controversy, which, from its nature, is doubtless disagreeable to the company, and certainly tedious to us, I am willing to make liberal concessions. The amount of the claim, including interest, is, in round numbers, $14,440. I am willing to take in satisfaction ten thousand dollars ($10,000), which is within $560 of the rebate proposed.

I submit this to the company through you, trusting that, by your advice, they will feel it to their interest to accept.

I am going to Washington City on the 2d or 3d of December, and will on my way stop and see you in person, and receive your answer to the foregoing.

Very respectfully,
JOS. S. LAURIE.

(Endorsed:) After consultation with the president, am compelled to decline the proposition. The offer made on the part of the company must be adhered to. O. H. P.

94 "E."

LAW OFFICE OF JOS. S. LAURIE,
521 Olive Street,
ST. LOUIS, *January 26th*, 1879.

O. H. PALMER, ESQ.,
Counselor-at-Law, New York City.

DEAR SIR: To your letter of 22d proposing a settlement of the case of Jeffries, Adm'r, vs. The Mutual Life Ins. Co. of New York, by paying the amount of the claim, less a rebate of $5,000, I replied on the 29th of Nov. to the effect that I would be willing, under the circumstances, to accept $10,000 in satisfaction, submitting this to your consideration, and stating that business would call me to Washington City during the early part of Dec., and that I would visit New York and receive your answer in person.

I have been expecting weekly ever since to start to Washington City, but matters which I then had in mind have not as yet required me to do so, and it now seems rather indefinite when I shall go. Such being the case, I now write requesting your answer to my

proposition. The claim at present date is about $14,600. So that the difference between us is trifling, yet it is as much as I feel warranted in yielding. Allow me to say that such a statement of this
95 case would be advantageous to the interests of the company in this locality, at least so far as the estimation of these are concerned who are familar with the litigation. I say this, of course, without intending any reflection on you.

I shall be in *Chicago* throughout the presnt week and a portion of the next, and you will please address me *there* at *Grand Pacific Hotel*, and, if necessary, I can proceed to New York from Chicago.

Very truly,

JOS. S. LAURIE.

96 No. 3.

JAN'Y 29*th*, '79.

JOS. S. LAURIE, ESQ.,
Grand Pacific Hotel, Chicago, Ills.

DEAR SIR: Your favor of the 26th inst. just received. I should be very glad to oblige you, but I was entirely frank and sincere in my letter to you of the 22d of Oct. [Nov.] last, in which I stated that I had made the very best proposition in my power to make. I will endeavor now to get authority, notwithstanding the delay to carry it out, if you decide to accept it.

But I must ask you to decide definitely at once, otherwise, for my own protection, I must regard it as withdrawn.

Yours, very truly,

O. H. PALMER,
Sol'r.

Copy.

97 "F."

LAW OFFICE OF JOS. S. LAURIE,
521 Olive Street,

ST. LOUIS, *Feb'y 3rd*, 1879.

O. H. PALMER, Esq'r,
Solicitor, New York City.

DEAR SIR: Your favor of Jan'y 29th was received by me in Chicago on the 1st inst. I returned to St. Louis to-day, and will say in reply for the purpose of relieving myself and the parties here interested from any further care or anxiety in the matter, I am willing to accept your proposition for settlement of Jeffries' case, provided my understanding thereof is correct.

Your last letter refers to a letter of *Oct.* 22d as making the most favorable proposition, to wit, a rebate of $5,000. I find no letter of such a date, but one of *Nov.* 22d, in which you state that you are willing to settle the claim less a rebate of $5,000. It is to this letter I presume you refer. If such is the case I am willing to accept in satisfaction of the claim the amount of the judgment, with

interest thereon to that date—Nov. 22d, '78—less a rebate of $5,000.

98 I apprehend that there will be no misunderstanding between us as to the correctness af the above interpretation of your proposition. If correct, advise me at once, and we will close this wearisome matter. The transcript of which you have a duplicate will furnish you with all figures necessary to arrive at the amount.

Very truly,

JOS. S. LAURIE.

99 No. 4.

FEBRUARY 6TH, '79.

JOS. S. LAURIE, Esq.,
521 Olive Street, St. Louis, Mo.

DEAR SIR: I am in receipt of your favor of the 3rd inst. The amount of the judgment referred, as appears by the transcript Oct. 9th, '77, was..... $13,495 00
Add interest to November 22nd, '78, at six per cent... 906 42

Making a total of..... $14,401 42
Deduct..... 5,000 00

Leaving a balance of..... $9,401 42

The amount will be paid upon the surrender of the policy and satisfaction of the judgment, and stipulation authorizing the clerk to strike the case from the calendar, and a discharge of the claim by Kennedy's administrator. I expect of course that the matter will be closed without any unreasonable delay.

I enclose you a blank discharge of the claim to be signed by the administrator. You can send the necessary papers directly to me, or to any correspond't you may have in the city, as you may prefer.

Yours truly,

Copy. O. H. PALMER, *Sol'r.*

100 And afterwards, to wit, on the 15th day of January, A. D. 1880, the following affidavit of Joseph S. Laurie was filed in said cause, which said affidavit is in words and figures as follows, to wit:

Supplemental Affidavit of Jos. S. Laurie for Petitioner.

UNITED STATES OF AMERICA,
IN THE EASTERN DISTRICT OF MISSOURI, } *ss.*

On motion of C. S. Jeffries to set aside satisfaction of judgment in case of Jeffries, adm'r de bonis non of Allan A. Kennedy. Jos. S. Laurie, for his supplemental affidavit, being duly sworn, says, in answer to the counter affidavit of T. W. B. Crews herein to-day filed, says, states that is not true that affiant a few years since asked

Crews about the fee in these insurance, and that Crews said it would have to be allowed by the probate court, and no doubt it would be liberal; on the contrary all the conversation in regard to the fees was as alleged in affiant's former deposition. Crews aludes to the fact that such a contract was improbable, because the adm'r would have no such authority to make such contract.

A contingent fee of one-half in damage and desperate cases was our uniform rule, and we always took steps to prevent the pl'ff in such cases from compromising the cases without our consent, sometime by assignment of judgment. Affiant can produce a
101 case, the name of which he now does not recollect, when in an action by the curator of a minor child against the railroad for killing his father, Crews and myself made a contract with said curator to prosecute the case to final termination in consideration of a fee of one-half the amount recovered. The curator lived in a different county, and the contract was made without the order or knowledge of the probate court.

In the present case affiant is well advised that the contract for fee and the compromise would, if necessary, be sanctioned without hesitation upon the application of the adm'r and Col. Crews, with a simple statement of the facts and condition of the case.

The statement that upon the dissolution of co-partnership, Crews allowed affiant to continue in certain cases, so as to give affiant an opportunity of working out and paying out certain monies which said affiant had improperly used, and for which said Crews was bound. This is false, and, as a matter of law, evidently so, as affiant was still a copartner in all cases then on hand, and was by law entitled to one-half the fees realized therefrom, both here and in Frank. County, and affiant remained in Crews' office, to the best of his recollection, about one year, for the purpose of closing out said caused, and it was only quite recently Crews re-
102 minded said Laurie of certain partnership cases and reminded that he relied upon him (the affiant) to attend the same. Of the unfinished Franklin County cases, Crews has never made any return whatever, altho' affiant has been assured that he (Crews) has collected considera'l sums, which he has fraudulently appropriated the same to his own use.

As to the statement that the copartnership on 26th of July, Crews can readily establish the fact by producing the writing signed by us showing the dissolution.

Crews alleges that he argued the case before the U. S. Sup. of Jeffries *vs.* the Ins. Co., is certainly contrary to my recollection, but he can readily establish the fact if the affiant is mistaken.

Certainly it is true that he rendered no assistance in preparing the briefs, other than to write according to my dictation from authorities which I had previously collected.

Affiant here produces the contract with Franklin County to which Crews alludes.

Crews says that the county the next day cancelled the contract for the additional, & that he has received nothing thereunder, & further no one has rec'd a dollar thereunder, but affiant, as soon as he learned it, expressed his disapprobation to Crew & de-
103 sired that the county be notified that we would it responsible, to which Crews replied that it took two to make a contract and the consent of both parties to rescind it; that he concurred with me in hold the county responsible, but suggested that we defer the matter.

Some time in the fall of 1874, I was yet in the office occupied by Crews & Laurie, and Wm. H. Letcher was there on a visit, when Crews brought up the Franklin County bonds, and Crews remarked, much to my surprise, that he had, of his own motion, ratified the aforesaid recision by Franklin County & made a new contract with the county in his own name, & he proposed to settle the whole matter by giving me the estate of Jabez L. North—$1,500. Mr. Letcher, who had by the unjust manner in which Crews had treated him in the appropriation of $6,000 to his own use, which Crews had collected, but which belonged jointly to said Letcher & Crews as the result of sale of lands in Saline County, had withdrawn from the firm long since and also proposed to give me $1,500.

Letcher replied that he did not expect anything further except the money expended by him on his trip to U. S. court for the purpose of arguing the case of Steins *vs.* Franklin (one of the bond cases), money which I knew Crews had long befere collected,
104 & which Letcher said he never received. I became indignant and criticised his conduct of acting this manner without consulting me who had an equal interest with him. Told him the new contract wold enure to my benefit by the law of partnership, and that I would hold himself responsible.

Told him further that his payment of $1,500 to North's father as adm'r was much more than he was entitled, as he had died shortly after the contract, at what date I do not recollect: and further, that he was entitled to no more. Crews' reasons for making the first payment of $1,500 to North's adm'r, and his present desire to pay $1,500, were, as I knew and as was aware that I knew, selfish reasons, which are not pertinent here, and which I am prepared to state whenever Col. Crews desires it. Col. Crews has gone entirely out his way in this counter affidavit to maliciously accuse me of insolvency, and I will remark here that it was my intentien to bring against him an action for an accounting, but knew that it was useless to incur the expense, as he was entirely execution proof, so that I have just allowed matters to rest.

As to whether he owes this affiant anything, I will stay that he does, and when, after the death of North, I arranged and presented him, Crews, with a list of the city cases, with fees paid and
105 due, and called upon him for a statement of the Franklin County business, upon which he had been a regular attendant

and tried many cases, he replied that he had no list, but would make out one from memory, showing, during 5 or 6 years, only about $1,500 collected by him. This he said he knew was not correct, but he would examine the docket and furnish me with the exact amount collected and yet due. This he has never done or affirmed. Affiant has by inquiry learned of numerous fees collected by Crews in Franklin, but not included in the list furnished as aforesaid, but appropriated same to his own use. Affiant believes, from the inquiry he has made, that the aggregate amount collected by Crews, exclusive of the bonds, exceeds $6 or $7,000.

In regard to his assertion that affiant furnished no assistance in the Franklin Co. land case, affiant states that he has frequently been counselled with Crews in regard thereto, has examined the legal proposition, and when the case of Sterne was taken up by Franklin County to the U. S. Supreme Court, Crews was not a member of that bar nor was I; therefore the case could not be docketed. At Crew's request went on to Washington City, was enrolled in the Supreme Court on the introduction of Mr. Phillips, and the cause was docketed in my name. I will, however, frankly admit
106 that I left the management of all the Franklin County bond cases to Crews, not supposing for a moment that I was not equally interested, but because it was a matter of personal importance and affected his political schemes.

His statement that he owes me nothing by reason of the new contract is untrue, as appears by the papers. It is a legal proposition to be determined by the court. We have been on friendly terms, and has, when we met, frequently spoke about the cases and told me the condition thereof, neither affirming or denying that I was interested thereon. I had information that the fees under the new contract would amount about $20,000, and I intended, as soon as the matter came to a focus, to assert my rights in a legal manner, claiming on half of the amount realized by him under this contract and other Franklin County cases, and allowing him a credit of one-half of the fee I should receive in insurance case. Crews states that if I really had the money deposited as alleged it was entirely useless, as I should have gone and paid the money to Jeffries, the adm'r.

I explain, as before, that I had not been notified by the agent to enter up satisfaction of the judgment, and as I knew Mr. Jeffries would make no settlement without the advice of his son-in-law, and as Crews had denied formerly my interest in the Franklin County contract, I knew from his character and from deal-
107 ings with him that unless I acknowledged his right to one-half the fee in the insurance that he would not allow his father-in-law to make the settlement, and, therefore, I concluded to wait until the F. County fees were realized and then go to Crews and state my compromise and propose a settlement. That Crews would have settled with the company, had he been attorney, on the

same basis upon which I settled, there is no doubt in my mind, and I feel equally assured from his conduct in former cases that I never would have rec'd a dollar.

In regard to Col. Thoroughman's affidavit, who is certainly an honorable and truthful gentlemen. I had an interview with him this morning, during which I called to his mind several statements, but regarding the affidavit as immaterial I concluded to let the matter rest, merely stating that which I did not make a strictly speaking legal-tender, I told him that I had the money in the hands of a third party; that I offered to pay it to Crews and would pay it to him as Crews' att'y.

JOS. S. LAURIE.

Subscribed and sworn to before me, this 15th day of January, A. D. 1880.

M. M. PRICE, *Clerk.*
By A. P. SELBY, *D. C.*

108 And afterwards, to wit, on the 15th day of January, the following affidavit of A. P. Selby was filed in said cause, which said affidavit is in the words and figures as follows, to wit:

C. S. JEFFRIES, ADM'R, *vs.* MUTUAL LIFE INS. CO. N. Y. } On motion to set aside satisfaction of judgment.

Affidavit of A. P. Selby for Respondent.

A. P. Selby, deputy clerk, being sworn, deposes and says, that on the 15th December, 1879, Mr. Laurie came to the clerk's office before ten o'clock, A. M., and said he wanted to acknowledge satisfaction of the judgment in the case of C. S. Jeffries, Adm'r, vs. Mutual Benefit Life Ins. Co. of N. Y. I told him the satisfaction could be entered in the clerk's office on the margin of the record of the judgment, and it was so entered by Mr. Laurie and attested by T. L. Crawford, deputy clerk. The court had not opened its morning session at the time, although sitting later in the day. Affiant further says the practice of entering satisfaction of judgments, so far as he is informed, has been usually the mode followed in this case, although sometimes a paper containing an acknowledgment is filed in the clerk's office in addition to the marginal record entry; and once only, to the best of his recollection, has acknowledgment been made in open court, and that since this motion to set aside satisfaction of judgment was filed.

A. P. SELBY.

Subscribed and sworn to before me, this 15 January, 1880.

M. M. PRICE, *Clerk.*
By T. L. CRAWFORD, *Deputy.*

109 And afterwards, to wit, on the 26th day of January, A. D. 1880, the following proceedings were had in said cause and appear of record, to wit:

C. S. JEFFRIES, ADMINISTRATOR DE BONIS NON of A. A. Kennedy,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW York.

In the matter of the motion to vacate and set aside entry of satisfaction of judgment.

This day come the parties, by their attorneys, and the court having considered the motion of plaintiff to set aside, vacate and annul the entry of the satisfaction of the judgment heretofore recovered in this case, and being fully advised in the premises, it is ordered that said motion be and the same is overruled.

110 And thereupon said plaintiff, by his attorneys, files motion to set aside the judgment and finding on the motion to set aside and vacate the entry of satisfaction of judgment herein, and for a rehearing thereon.

111 And on said 26th day of January, A. D. 1880, the following opinion was filed in said cause, which opinion is in the words and figures as follows, to wit:

Opinion of Court on the motion to set aside entry of satisfaction of Judgment.

JEFFRIES, ADM'R,
vs.
INS. CO.

Motion to set aside entry of satisfaction of judgment.

"I have had under consideration matter concerning which there are a great many incidents. I am not disposed to go into those matters at any considerable length. A suit was brought in this court by an administrator named Jeffries on a life insurance policy. The case went from this court to the Supreme Court of the United States, and the Supreme Court reversed this court on this proposition: the averment made in the application by the insured was, that he was a single man and not a married man.

This court held, in the light of the authorities as they were then supposed to exist, that the question should not be held as an absolute warranty, but connected with the facts to be submitted to the jury, whether it was a matter material to the case. The Supreme Court held the sharp doctrine that it was a warranty, and if he represented himself as single and was married, there could be no recovery. The case came back for trial, and evidence was produced to show

112 that the representation of the plaintiff was written down as an answer by the agent of the underwriter,—he the agent

supposing that to be the man's condition, without relying upon his statement or paying any attention to it. The matter came up for trial and the jury found for the plaintiff, and the court set aside the verdict, as it did not think the testimony sufficient to establish the fact. A second trial was had—a fuller trial—and a verdict was again rendered for the plaintiff; and the case was taken by the insurance company to the Supreme Court of the United States. In the ordinary course of decisions there this case would not have been reached possibly for some years. The counsel for the insured then, after correspondence with the insurance company, agreed to take what was about two-thirds of the amount of the judgment, in round numbers. The proposition being accepted, thereupon counsel did receive the sum of money pursuant to the compromise, to wit, the two-thirds, and entered satisfaction of the judgment. The question presented to the court is upon a motion to set aside that entry of satisfaction, first, because a counsel employed to prosecute a case has no right to compromise it. Such is the view of the Supreme Court of the the State of Missouri; but the rulings are largely in conflict.

But this case has another aspect, the original plaintiff
113 entered into a specific contract, which I certainly do not think commendable, whereby these attorneys (who were two) should prosecute this extremely doubtful claim—they to receive a certain portion of the proceeds, with full power to compromise as they should please. And they prosecuted under these doubtful circumstances, and finally compromised, and, having compromised, the defendant company has paid this money. It is contended that the attorney thus compromising did an act which is void in itself, and that without the money paid being returned, to wit, about $9,000, the compromise may be declared void, and execution be issued on the whole amount of the judgment. I am not disposed to go into an examination of the authorities, but merely state, for the purposes of the determination of this motion, that here express authority was given with regard to the matter, that this claim was very doubtful, and that, in my judgment, the compromise was rightly made. I heard the case three times, and in my opinion plaintiff would not have gotten a sixpence before the Supreme Court. I think that the attorney acted, so far as money considerations are concerned, very wisely. Should this entry be now set aside? On what ground? That the entry was made during a term of court on the record instead of in open court. It so hap-
114 pens that there is no express statute of the United States as to entering satisfaction; but it is claimed that, by analogy, we must follow the state statute, and if we follow that practice this entering of satisfaction may be made in open court or, in vacation, on the margin of the record. But if, on the facts stated, this entry is found to be void, the court would permit the party to appear in open court at this moment merely to cure a technical error. Now the difficulty arises on the face of the contract, under the old com-

mon law such a contract would not have been permitted. I think it would be better if the old common law was retained with regard to it. But such is not now the law, unfortunately.

Parties at their own expense may pursue a doubtful demand, and when the result is accomplised the contract is upheld. But it is said again that the original plaintiff died pending the proceeding, and a revivorship *de bonis non;* that this new plaintiff did not enter into any contract or ratify the old one; and that therefore the power given to the attorney to compromise could not be considered as applicable to matters as they stood on final hearing. Now, I suppose, when the contract is made by a party, he who succeeds in interest to him is bound by the original contract. But this motion is
115 against a defendant that has paid between nine and ten thousand dollars to declare all proceedings had under the circumstances void, and hold that company liable to execution for the whole amount of the original judgment, a part of the agreement to compromise being that the defendant insurance company should dismiss its writ of error in the Supreme Court of the United States, which it has done. How can you put this company in its original position? It must lose this amount of money, is out of the Supreme Court, and is remediless by the fault of the original plaintiff and the contract which he chose to enter into. Such would be neither justice nor right.

Without going into the extreme proposition whether as an attorney employed in the case has a right to compromise it, in this case there was a specific contract, and I overrule the motion.

And thereupon, on said 26th day of January, 1880, the following motion to set aside the judgment and finding of the court was filed in said cause, to wit:

116 C. S. JEFFRIES, ADMINISTRATOR DE BONIS NON OF THE Estate of Allan A. Kennedy, deceased, Plaintiff,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, Defendant.

Motion to set aside Judgment.

On the motion of plaintiff to set aside and annul the acknowledgment of satisfaction of judgment in said cause.

The said plaintiff comes and moves this honorable court to set aside the judgment and ruling of the court upon said motion, and to grant him a new trial and hearing thereon for the following reasons, viz:

1st. Because the judgment and finding of the court are contrary to the law and against the evidence in the case.

2nd. Because the decision of the court is based upon an assumption that Joseph S. Laurie, as attorney, had authority from the original administrator to compromise the suit, which assumption is not sustained by the evidence.

117 3rd. Because the court erred in finding that the administrator, or that either administrator, had the power to authorize a compromise of said suit, or had ever so authorized it.

4th. Because the court erred in finding that the attorney, Joseph S. Laurie, was authorized to compromise said suit.

5th. Because the court erred in holding and finding that the present administrator is bound by the contract alleged to have been made by the original administrator, authorizing the attorneys to compromise the suit, and especially in the absence of all evidence that he knew of such contract.

6th. That the court erred in finding that the entry of satisfaction had been merely irregularly made, and that the said attorney, Laurie, can now be allowed to perfect said entry of satisfaction.

7th. Because the decision is contrary to right and justice.

WALDO P. JOHNSON,
JOHN R. FLOURNOY, and
T. W. B. CREWS, *Attys. for Plff.*

118 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following supplemental motion for a new hearing was filed in said cause, said supplemental motion being in words and figures as follows, to wit:

Supplemental motion for a new hearing.

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADMINISTRATOR DE BONIS NON of the estate of Allan A. Kennedy, deceased, Pl'ff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF New York, Def't.

On the motion of plaintiff to amend and vacate the entry of satisfaction of the judgment in this case.

Plaintiff comes, by leave of the court, and by way of supplement to the motion heretofore filed in said cause for a rehearing and new trial thereof, assigns the following additional reasons in support of said motion:

1. The court was mistaken in his finding as to a contract or agreement on the part of Crews and Laurie to prosecute said suit for a contingent fee and with power to compromise.

119 The only evidence in support of such a finding is the naked statement of Laurie, the man of all others in the world most interested in making it. That his testimony is not entitled to belief can be made apparent.

In the first place, it is the verbal statement of an interested party as to a pretended contract made with a man who has been dead for more than 7 years. Charles W. Jeffries, deceased, could alone in terms

contradict it, for it was with him that this contract was pretended to have been made, and he died in January, 1873. Such testimony is not ordinarily entitled to much weight, and especially when it is not even pretended that any living person ever heard or knew of it before. That part of the pretended contract and the conversations alleged to have been had between Laurie and Crews, is wholly denied by the latter, who positively swears that he never heard of it, nor had an intimation of it, until he saw it in the affidavit of Laurie filed in this case.

The affidavit of W. C. Bragg shows that this suit, and also that the suit of Charles W. Jeffries, administrator of Kennedy, against the Economical Life Insurance Company, were filed in the Circuit Court of St. Louis in the hadwriting of Crews, and signed by Crews and Laurie, with Halligan, attorneys. The affidavit of Crews further shows that Laurie had, in fact, nothing *nothing* whatever to do with the earlier stages of these cases. That
120 all he has stated, in that respect, as to consultations between himself and Crews, and as to his advice, &c., and tending to show his importance in the proceedings, especially until long after the death of Charles W. Jeffries, is wholly false.

The fact that Laurie in his affidavit has scrupulously guarded against giving a date or fixing a time when said pretended conversation took place between Dr. Charles W. Jeffries and himself, and strips his statement of every circumstance by which it could be directly impeached, of itself should elicit suspicion.

The court will bear in mind that Laurie in his negotiations with Judge Palmer, the attorney for the insurance company, resident in New York, at no time placed his authority to compromise on any contract made with Charles W. Jeffries. He states that he referred Judge Palmer to a decision made by Chief Justice Marshall in 7th Cranch's Reports, in which it was held, as he contended, that an attorney was authorized to compromise a cause irrespective of the rights or wishes of his client.

When asked by Crews, on the 13th of December, 1879, at the first interview had between them after Crews learned that he had attempted a compromise of this kind, by what authority he assumed to make a compromise, he placed it solely upon
121 said decision rendered by Chief Justice Marshall, and never hinted even at that time of his pretended contract with Charles W. Jeffries, deceased. See his own affidavit as to that conversation and the affidavit of Crews. That it was an afterthought is beyond question.

Judge Palmer in his affidavit does not even refer to any statement made by Laurie as to his pretended contract made with Chas. W. Jeffries, deceased, or as to any authority vested in him by virtue thereof, nor to the statement of Laurie as to the decision written by Chief Justice Marshall. He tells you that he understood from Laurie that the latter was acting in the full confidence of the present administrator. This is what he says:

"On the 14th day of February, 1879, the said attorney, Mr. "Laurie, called upon defendant personally at his office in New "York, and stated to deponent that he was ready to make the com- "promise, and thereupon the said Laurie presented to deponent the "original policy of insurance in question, and deponent prepared "and attached thereto the proper voucher, which now appears upon "said policy, and ready to be produced, which was executed as "thereby, and delivered to said deponent. And deponent there-
"upon caused a check to be drawn for the sum of $9,401\frac{42}{100}$
122 "(nine thousand four hundred and one dollars and forty-two
"cents), and which was made payable to the order of Charles "W. Jeffries, administrator of the estate of Allan A. Kennedy; "but deponent, at the request of said Laurie, and upon his assur- "ance that Mr. Jeffries was fully cognizant of all the facts, and "that he was acting with the full consent of said Jeffries, and that "it was necessary to use the money in the city of New York, with- "out the delay of sending forward the check for the endorsement of "said Jeffries; and deponent relying upon said assurances, and in "the belief that said Laurie was fully authorized and empowered "to act in the premises, consented to add after the words, 'Pay to "the order of Charles S. Jeffries, administrator of Allan A. Ken- "nedy,' 'or Jas. L. Laurie, atty.' And deponent further says that "the said company had every reason to believe, and did believe, "that said Laurie was fully authorized and empowered to compro- "mise said claim, and only consented to such compromise after re- "peated requests on the part of said plaintiff, through his attorney. "And deponent further says that no doubt was entertained on the "part of the company as to the full authority of said Laurie to com- "promise the claim, until its attention was called to the matter a "few weeks since by a letter from T. W. B. Crews."

It is not now contended that Laurie had any authority
123 whatever to compromise said claim from C. S. Jeffries, the present administrator.

The latter states that he never had a word with Laurie on the subject of this suit in his life, and he further states that he did not even know that Laurie was an attorney in the case.

The conclusion is unmistakable that Laurie deceived the insurance company, Judge Palmer admits as much. It was for this that he went to New York. What purpose could he have had other than to deceive the company and thus to get possession of money which he could not otherwise have had. There was never any danger of his losing any part of any fee that should be rightfully due to him. This he well knew. Laurie's letters to Judge Palmer are carefully worded and drafted with a view of deceiving. Take for example the paragraph in his letter of November 29th, 1878:

"Yours of the 22nd inst. is before me. I have delayed answering thus far for the purpose of consultation and reflection. You propose, in the case of Jeffries, adm'r, vs. The Mutual Life Ins. Co.

of New York to pay the claim, less a rebate of $5000 $\frac{00}{100}$. In order to close this controversy, which, from its nature, is doubtless disagreeable to the company and certainly tedious to us, I am willing to make liberal concessions."

His conduct in withdrawing the policy of insurance
124 from the files of the court in the manner in which he did it, without the consent of the court, without leaving a copy, and without the knowledge of the clerk that he intended to retain possession of it, besides being clandestine and reprehensible in evidence of a design to conceal his purpose from the knowledge of those interested.

He is convicted of deceit by Palmer. He is contradicted by Crews as to every essential fact upon which the court has based his finding on this motion. He is contradicted by C. S. Jeffries as to all he states or pretends, in relation to anything having passed between them. He is contradicted both by Crews and by Thoroughman as to recent matters that took place in December last, especially as to a tender, and thus manifests a recollection not to be trusted even for a few weeks. He is contradicted time and again by the record. The recklessness of his statements and conduct should have attracted the attention of this court. If evidence of his bad faith and dishonest purposes is further wanted, the fact that he kept his pretended compromise a profound secret from all parties interested for a period of ten months and until it was accidentally discovered, and has never yet tendered the money so received by him to the administrator, or to anyone authorized to receive it, ought to satisfy any court. His pretence of a tender of money in court upon the hearing of this motion was but a farce. Why did he not deposit the money in court?

125 Read the following which came to plaintiff in the handwriting of Laurie since the hearing of this motion, as the terms and conditions upon which he proposes to pay over a portion of said amount:

"C. S. JEFFRIES, ADM'R DE BONIS NON OF THE Estate of Allan A. Kennedy, dec'd,
vs.
"THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

"Joseph S. Laurie, att'y of record for plff. in above cause, in acc't with said adm'r.

	Dr.
"To cash received in compromise of said cause.....	$9,401
Cr.	
"By expenses of 2 trips to N. Y. city.	$130
	$9,271
" " fee ($\frac{1}{2}$).....	$4,635 50
Bal. due.....	$4,635 50

The following receipt is intended as a receipt in full, recognizing, "as decided by the court, the propriety, good faith and authority "of said Laurie in making said compromise, hereby ratifying the "same and acquitting the def't Insurance Company of all further "liability, and recognizing the above fee, charged by said Laurie as "in pursuance of contract, and discharging him from all further "liability to said estate:

"Received payment,

"*Adm'r de bonis non of the estate of Allan A. Kennedy, dec'd.*"

126 The original of this was returned by request.

In view of the real facts of the sworn statements of the present administrator and of those in whom his confidence is placed, could a more disgusting or insulting proposition be made?

This is absolutely the nearest approach to a tender—this which requires the plaintiff to subscribe to his own degradation as a condition upon which he proposes to pay over money to him that he comes into this court and asserts he collected for plaintiff over a year ago, and the use of which he has been enjoying all this time without interest. Plaintiff knows, as well as he knows anything not susceptible of direct proof, that Charles W. Jeffries never made such a contract as is asserted by Laurie, and his own self-respect forbids him from recognizing it, aside from all questions of interest to the estate of Charles W. Jeffries or of Kennedy. Is it not plain to the court that Laurie does not intend to pay over this money or any portion of it without litigation, which would end, as all other litigation has, against him. Even if his conditions, as embraced in this receipt, were complied with—absurd and revolting as they are to an honorable man—there is no sort of assurance that the money would be paid over. But the plaintiff ought not to accept such conditions.

The court ought not to sanctify such a wrong. It is proper
127 for the court to know in this connection that Laurie is utterly irresponsible pecuniarily. In proof of this we file herewith certificates of the clerk of the Circuit Court of the City of St. Louis, marked respectively Nos. 573, 85, 330, 141, being the numbers of cases in said court for the years respectively 1873, 1877, 1877, and 1878, and judgments thereon, and in which the executions have been returned "*nulla bona*," and as early as 1873 property levied on or garnished is shown to have been claimed by Laurie as exempt from execution under the exemption laws of the state because he was the head of a family. Other unsatisfied judgments can readily be shown against him, and some of them for much larger amounts. We ask especially the attention of the court to the affidavit of Joseph Maguire, of the firm of J. A. Griffith & Co., filed herewith, as to the particulars of a judgment and the circumstances attending it in their favor against him in this court. Surely no better evidence of the moral degradation of Laurie could be asked.

And the plaintiff files herewith the affidavit of John T. Crowe, judge of the Probate Court of Franklin County, Missouri, in which it is shown that all expenses attending the litigation in this suit and in the cause against the "Economical" were paid by plaintiff and his predecessor from time to time, and that at the November term, 1872, of said probate court, when Charles W. Jeffries made the only settlement that he ever made as adm'r of said estate,
128 he paid to T. W. B. Crews $100 for expenses of a trip to New York to attend the taking of depositions and $400 on account of fees and expenses as attorney in behalf of said estate, "and that there is nothing of record in the records of said probate court, nor among the papers on file therein, showing or tending to show any contract between any administrator of said estate and any attorney or attorneys for the transfer of any interest in any life ins. policy or in the proceeds of any life ins. policy, or in the proceeds of any litigation upon any life ins. policy or policies, nor authorizing any adm'r of said estate to give or contract to give the proceeds or any interest in the proceeds of any litigation upon any insurance policy or policies to any lawyer or lawyers in consideration of legal services, or for any consideration, nor otherwise."

And it further appears from said affidavit that said estate is still in process of administration.

The court will observe that in that only settlement of Chas. W. Jeffries, made but a short time prior to his death, no mention whatever is made of the pretended contract with Laurie or Crews & Laurie. No consent of the court was asked to the same; there was no reference to it. In that settlement he pays Crews for all expenses and attorney's fees incurred up to that time, and it
129 could only have referred them to these insurance cases; for Mr. Halligan, the leading attorney, who lived in Franklin County and had his office there, was his chief advisor. In fact, we think it can be established that up to that time there was no litigatirn, or none of any importance, anywhere in which that estate was interested; or if so, that it had but just begun. If Chas. W. Jeffries had made such a contract, why did he pay attorneys' fees without designating the service if these suits had been excluded? Why did he pay costs in these suits without mention of such a fact? What object could he have had in concealing it? Why should he unnecessarily have incurred a personal risk when he had so little at stake? Was the pretended contract made after that settlement in the probate court? It will be remembered that Laurie has carefully avoided giving it a date. Plaintiff can show that Laurie never met Chas. W. Jeffries after that settlement was made, and plaintiff can show with almost absolute certainty the date of every trip made by Chas. W. Jeffries to St. Louis during the time that he was adm'r of said estate. He can show further that his acquaintance with Laurie was altogether casual and limited.

With the proofs already adduced can the court reject all other

testimony and believe only the unsupported statement of Laurie? Is he to be allowed to overbalance the circumstancial facts and the testimony of reputable and good citizens? Who is more interested in the result of this matter than Laurie? So far he is the only one who has forfeited by it. Set aside this entry of satisfaction and the insurance company has the power to make him refund. That he obtained possession of its money by fraud and falsehood it does not deny, but, in fact, positively asserts. A successful criminal prosecution is perhaps only possible to the insurance company. The plaintiff cannot proceed against him without a ratification of the pretended compromise, and in such case Laurie's insolvency would leave plaintiff entirely remediless; the insurance company could at least insist on his paying the money into court pending this litigation without the abandonment of any right; can the plaintiff do so? Does the court want stronger credence of Laurie's interest in the result of these proceedings? Surely the court, thus fully advised of the conduct and character of this man Laurie, will not give him countenance, nor give evidence to his statements. And without such countenance and *credence* the finding of the court on this motion is erroneous, and ought not to be sustained. If the testimony of such a man, uncorrobarated as it is, shall prevail with the court there is no safety for life, liberty or property.

130

Allow us to add a single circumstance unnoticed before, but not unworthy of mention. We alluded to the fact that Laurie was so little acquainted with this plaintiff that where he has used his name in full it has been written *Charles* S. Jeffries, when in fact his name is Cuthbert S. Jeffries. The truth is, that beyond a nod, or word, or salutation, he never had a half dozen words with C. S. Jeffries in his life, as we can easily show.

131

2nd. The questionable conduct of the insurance company.

At first we were inclined to believe that the insurance co. had simply been overreached and deceived. That is its own version of the matter. It admits, however, leaving open every gap, and divesting itself of every safeguard, dictated by experience and prudence, and with a show of candor pretends to give a plain, simple statement of its transactions and negotiations with Laurie. When pressed as to facts not mentioned, or even referred to by Judge Palmer, the answer is equivocal, and amounts to a refusal. See his letter of February 12th, 1880, herewith filed.

In his letter of February 6th, 1879, to Laurie, filed with his affidavit, Judge Palmer says: "This amount" ($9,401 $\frac{42}{100}$) "will be "paid upon the surrender of the policy, and satisfaction of the "judgment and stipulation authorizing the clerk to strike the case "from the calander, and a discharge of the claim by Kennedy's "administrator. I expect, of course, that the matter will be closed "without any unreasonable delay.

"I enclose you a blank discharge of the claim to be signed

132 "by the administrator. You can send the necessary papers "directly to me, or to any correspondent you may have in "the city, as you may prefer."

Now, what occasion was there for Laurie to go to New York? In his blank receipt, heretofore copied, Laurie proposes to charge for two trips. Is it not plain that Laurie went there with a view of deceiving Palmer, and that the latter readily allowed himself to be deceived? Does Laurie present him a discharge "signed by the administrator?" Was the "amount paid upon the surrender of the policy and satisfaction of the judgment?" Was the draft made payable to C. S. Jeffries, administrator, in such a way as to require his endorsement? Why should not the money have been paid to "John Smith" as well, or any other party who might represent himself to be authorized to receive it? What evidence had the company or its attorney that Laurie was authorized to do what he did? Or that he was a responsible party? Or that the plaintiff knew anything of his transactions? What excuse did he give them for making a trip all the way to New York?

If permitted to do so by a rehearing we will show that the statement of Judge Palmer, as contained in his affidavit, is, at least, disingenuous. We will show that he has not given all the
133 facts. That a previous interview was had between him and Laurie concerning this matter, of which neither he nor Laurie make any mention whatever. We will show that the name of Laurie had not been entered in the Supreme Court of the United States at the time the pretended compromise was made, and that there was no more reason to believe that Laurie would be, or was, the attorney for the plaintiff in said court than that Broadhead or Overall would be the attorneys for the defendant (there). We will show that defendant had no other reason to believe that Laurie was authorized to compromise this suit than the mere naked statement of Laurie, and that it took no pains whatever to ascertain the fact. We will show the defendant to have been guilty of criminal negligence in this entire proceeding, the consequence of which is a loss to plaintiff.

We will show that the copy of the draft asked for by us has been purposely withheld to shield Laurie, and we will further show that before this motion was heard we consented to reinstate the case upon the docket of the Supreme Court, and that the company met the proposition by a demand for the plaintiff first to pay back the money which had been so paid to Laurie, and which the company knew Laurie had never paid to plaintiff, as the only
134 condition upon which the company would consent to reinstate it.

It must be apparent to the court that defendant was not sanguine as to the result of this suit, else, having incurred all the odium and expense of a purely technical defence for more than 7 years, it would not have surrendered on such terms, and that its course now

in shielding Laurie from the consequences of his perfidy is indicative of some baser fraud than has yet been shown, and which may be revealed by a new trial. Plaintiff states that a gross fraud has been perpetrated upon him, and upon the estate which he represents, and in the interest of justice he respectfully prays the court for a new hearing on this motion. And he respectfully states that he is willing to enter into any terms or conditions that the law will permit, and to the court may seem proper, to secure a fair and speedy adjustment of this matter. He states to the court the administration of this estate has already been prolonged nearly nine years, chiefly awaiting the result of this litigation, which, unless arrested by the court, promises to be almost indefinite.

CREW, JOHNSON & FLOURNOY,
Att'ys for Plaintiff.

135 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following affidavit of T. W. B. Crews was filed in said cause, said affidavit being in words and figures following, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

Affidavit of T. W. B. Crews.

C. S. JEFFRIES, ADM'R DE BONIS NON OF THE estate of Allan A. Kennedy, deceased, Pl'ff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW York, Deft.

On the motion of plaintiff to amend and vacate the entry of satisfaction of judgment in this case.

T. W. B. Crews, being duly sworn, on oath says, that in the affidavits heretofore filed by him in this case he did not deem it necessary to controvert the many falsehoods contained in the affidavit of Joseph S. Laurie, and especially those in relation to pretended conversations had between himself and Laurie, and as to the part that Laurie pretends to have played in the management of
136 this case, because he did not regard the same as having any bearing whatever as to the legal question involved in the motion to set aside this entry of satisfaction, and did not suppose that this court would give any attention to such statements, and especially as Laurie had represented them to be the statements of one partner to another, and the conduct of one partner to the other in the management of a suit.

Affiant contented himself with a denial of all that he supposed was at all material, and with the introduction of proof from other sources to disprove the statements made by Laurie, and having, as affiant imagined, on behalf of the plaintiff, shown the utter un-

worthiness of Laurie's testimony as to so many material points, he did not deem it necessary to go further in his own statements.

Affiant now states that the partnership of Crews & Laurie was dissolved in the summer of 1873, and it is, therefore, not true, as stated by Laurie in his affidavit, that said partnership was dissolved in 1876 or '7; but affiant states that at the time of the dissolution affiant permitted Laurie to remain in this and one or two other cases, at the earnest entreaty of Laurie, and of a creditor of Crews & Laurie, to wit, John A. Griffith & Co., of Cincinnati, Ohio, with a view of enabling Laurie to earn a fee, and
137 thereby repay certain money that he had collected as a member of our firm, belonging to said client, Griffith & Co., and had appropriated to his own use, and lost in gambling, whereby he had involved this affiant in loss and trouble; that, in consequence of this, affiant dissolved said partnership; that Laurie professed the greatest contrition for his conduct in misappropriating said money of our client, and promised to assign any interest he might have in our business when judgments could be obtained, or the fees earned in the cases that we were attending, and did assign to Griffith & Co. his interest in a judgment obtained in the Circuit Court of St. Louis County, in the case of Maher vs. Pacific Railroad Co., out of which, however, nothing was realized.

Affiant says that there is no truth whatever in the statement made by Laurie, that affiant agreed to prevail upon Dr. Charles W. Jeffries to administer upon the estate of said Kennedy, nor did affiant know until after the administration was begun, and the inventory made and filed, that Kennedy had any policies of life insurance, nor that his estate would be involved in any litigation.

Affiant further says that James Halligan, Esq., now deceased, was employed by the family of the decedent as attorney, and that he induced said Charles W. Jeffries to administer on said
138 estate, and was chief counsel in all the earlier stages of the administration.

And affiant states further that he never heard of the pretended contract which Laurie states he made with Charles W. Jeffries for a contingent fee in these insurance cases, or for power to compromise until the filing of Laurie's affidavit on this motion, and that, considering Laurie's interest in this proceeding, affiant did not suppose that the court would give any credence whatever to Laurie's statement in relation thereto, so improbable and unsupported as it was. Affiant says that all stated by Laurie in that behalf, so far as affiant has any knowledge or any reason to believe, is unqualifiedly false, and that the conversation which he says he had with affiant in relation thereto has not even a foundation in fact; and affiant says that he, affiant, never had a conversation with Charles W. Jeffries as to a contingent fee in these cases, and never made any such contract as is stated by Laurie, and never believed that it was within the power of the adm'r to make such. Affiant further says that he prepared

and filed in his own handwriting the orignal suits in this case and in the "Economical" case, and that Laurie scarcely knew of the cases or took any special interest in them until long after the death of Chas. W. Jeffries, and after the revival in the name of
139 C. S. Jeffries, which was made in this court on the motion of this affiant, and not in fact until the dissolution of the firm of Crews & Laurie; that affiant tried these cases first in this court, Laurie assisting him; that affiant procured the testimony, made a trip to Buffalo, New York, to take depositions, and afterwards when the causes were removed to the Supreme Court affiant made the briefs, for there were two almost exclusively in the "Economical" case, and affiant went to Washington City and argued that case orally before the Supreme Court, making one of said briefs while in Washington; and after the case was argued, in answer to questions propounded by Justices of the Supreme Court, and at their suggestion, that in this case of the "New York Mutual" affiant made much the greater part of the brief, had it printed, and sent it to the clerk of the Supreme Court, and believes that his letter submitting the cause on brief can yet be found. Hence the statements made by Laurie that he made these briefs or submitted these causes in the Supreme Court is false, and affiant says to every brief or paper filed in said causes where the name of Laurie appears at all as far as he knows affiant's name also appears, except on the motion for an execution in this case for insufficiency of bond since the last trial here, and to which his attention was not called, and that the record will show that affiant's name appears in many
140 places throughout the proceedings without the name of Laurie, but affiant says it was not intended thereby to ignore any rights that Laurie had in them.

Affiant denies that he ever at any time agreed that "the fee or rights" should go to Laurie, or that affiant should abandon this case, or that anything to such effect ever passed between them, or that he ever withdrew from said cause other than as stated in his affidavit heretofore filed, and affiant says that the statement of Laurie that this affiant at any time or place ever authorized or consented, or expressed to him a desire for a compromise of this case, is absolutely false, and affiant says that it is likewise untrue that he, at any time, lost hope in the eventual success of this cause.

Affiant may have expressed doubts, as he might well do about any case, but he has no recollection whatever of having so done, and says that the pretended conversations detailed by Laurie in relation thereto are wholly untrue; that after the third verdict in this court, affiant was especially hopeful, that he talked with members of the jury that tried the case, and found that they totally disbelieved the testimony of Richards, the only important witness for the defence, as they well had a right to do; and affiant be-
141 lieved, and still believes, that the Supreme Court will never disturb this third verdict for plaintiff. The defence being

wholly technical, and the witness by which that was established being disbelieved by a jury; that, on the very day of that trial, and in the clerk's office of this court, Mr. Overall, one of the attorneys for defendant, in the presence of defendant stated that if we would compromise he would give us $10,000, or words to that effect. That this statement was made after the verdict had been rendered, and while Laurie and Overall were talking about a bet or wager for $25.00, as affiant understood it, as to the result of that trial; but that neither affiant nor Laurie having any authority to compromise, no attention was paid to the offer or statement. Affiant says that there is no truth whatever in the statement of Laurie that the conduct of these cases was left by affiant exclusively to his charge or management, and that the several conversations so detailed by Laurie in his affidavit, had between them, are sheer fabrications, made of whole cloth, to suit the case from this present standpoint.

Affiant further deposes and says, that prior to the hearing of the motion herein he wrote to Judge Palmer, defendant's attorney, in New York, expressing the consent of plaintiff to reinstate the cause on the docket of the Supreme Court, but Palmer answered that defendant was not willing to reinstate it unless plaintiff paid
142 back to defendant the money which it had paid to Laurie, which money Judge Palmer well knew at which he admitted Laurie had gotten from the company by fraud and deceit. As it was no fault of plaintiff that this money had been improperly paid to Laurie, or that defendant had improperly entered into stipulations for the dismissal of said cause in consideration of money which it paid to Laurie, and because defendant had permitted itself to be victimized by misplaced confidence, affiant regarded the proposition of Judge Palmer as altogether unreasonable. Defendant had the means of knowing what authority Laurie had, and upon its own confession took no precaution whatever to ascertain the facts. In conversation with resident attorneys here, Mess. Broadhead & Overall, since the filing of said motion, and also with the general agent of the company in this city, Mr. Byron Sherman, they all declared to affiant that they had not been consulted and knew nothing whatever of said compromise until in the month of December, 1879, and fully ten months after it had been made.

In conclusion, affiant begs leave to state that all that was said by Laurie respecting the deception practiced upon him by affiant as to Franklin county matters, is false; that affiant entered into his contract with respect to the Franklin county bond suits, which
143 Laurie pretends he was waiting to see settled, sometime after the dissolution of his co-partnership with Laurie, and that Laurie has no interest whatever in the same; that Laurie never has demanded of this affiant any settlement of their accounts, but that affiant has always been ready and willing to settle with him, whenever he would pay up his indebtedness to cliants of said firm whose money he had appropriated to his own use, and that there

has never been a trial within the last eight years that Laurie has not been indebted to affiant; that said Laurie is utterly insolvent, and affiant has no hope whatever of being able to recover a cent from him, otherwise he would long since have brought suit against said Laurie and compelled him to a settlement.

Affiant says that the name of C. S. Jeffries is Cuthbert S., not Charles S. Jeffries.

T. W. B. CREWS.

Subscribed and sworn to before me this 10th day of March, A. D. 1880. Witness my hand and notarial seal.

[SEAL.] CHARLES M. STEPHENS,
Notary Public, City of St. Louis, Mo.

144 And afterwards, to wit, on the 10th day of March, the following exhibit was filed in said cause, said exhibit being in words and figures following, to wit:

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK,
LAW DEPARTMENT,
140 to 146 Broadway,
NEW YORK, *February 12th*, 1880.

T. W. B. CREWS, Esq.,
600 Olive, St. Louis, Mo.

DEAR SIR: Your letter of the 10th received. I have made a statement of the facts in relation to the Jeffries case in the form of an affidavit, which was sent sometime since to our counsel, Mr. Shepley. So long as the matter is pending by which it is sought to compel the company to pay the claim over again I should not feel at liberty to make any statement in respect to it except through our counsel. My action in the matter was in the most perfect good faith, and having offered, upon the return of the money paid, to reinstate the case upon the calendar and abide the decision of the Supreme Court, I think everything has been done that can be required by the strictest rules of courtesy and equity.

Yours truly, O. H. PALMER,
Solicitor.

145 And on the 10th day of March, A. D. 1880, the following exhibits were filed in said cause, said exhibits being in words and figures as follows, to wit:

Copy of Execution from C. Ct. of St. Louis of May 19, '77.

The State of Missouri to the Sheriff of the City of St. Louis, greeting:

Whereas, Francis S. Thompson, on the 18th day of March, eighteen hundred and seventy-three, before Charles F. Walther, a justice of the peace for the county of St. Louis, recovered against Jo-

seph S. Laurie the sum of seventy-six dollars, debt, together with his costs and charges in that behalf expended; and whereas, upon said judgment an execution was issued by said justice, delivered to Constable Peter Browe, who made return thereon as follows, to wit, "*nulla bona*," all of which appears to us from the transcript from the docket of said justice, certified up and filed in the office of the clerk of the circuit court of St. Louis County, on the 18th day of May, 1877, according to the statute in such case made and provided:

These are, therefore, to command you that, of the goods and chattels and real estate of the said Joseph S. Laurie, you cause to be made the debt and costs; that you have the same before the judges of said court on the first Monday of June next to sat-
146 isfy the debt and costs aforesaid; and that you certify how you execute this writ.

Witness J. Fred. Thornton, clerk of our said court, with the seal thereof hereto affixed, at office in the city of St. Louis, this 19th day of May, in the year of our Lord eighteen hundred and seventy-seven.

[SEAL.] J. FRED. THORNTON, *Clerk.*

To which execution the following return of the sheriff is attached, said return being in words and figures as follows, to wit:

Return of Sheriff & Summons.

No goods, chattels, or real estate found in my county belonging to the defendant whereon to levy this writ and make the debt and costs or any part thereof, and, by plaintiff's attorney, I summoned in writing as garnishee the Provident Savings Institution, by S. A. Raulett, cashier of said institution, at the hour of thirty minutes past three o'clock P. M., on the 19th day of May, 1877, in the city and county of St. Louis, Missouri, for said institution to appear in court at the return term of this writ and answer such interrogatories by the plaintiff touching its indebtedness to the defendant.

I further declared to said institution that I attached in its hands and summoned said institution as garnishee any goods, chattels, money, or evidences of debt which it may have belonging to the said defendant.

147 And, further, I did attach all debts due from to said defendant, or so much thereof as will be sufficient to satisfy the debts, interest, and costs in this suit.

EMILE THOMAS, *Sheriff.*
By J. M. THOMAS, *Deputy.*

St Louis, Mo., May 19th, 1877.

Upon the back of said execution the following endorsements are made, said endorsement being in words and figures as follows, to wit:

Return of Sheriff to Garnishee.

I have released on the within garnishee the sum of $300, the same having been claimed by the defendant as being exempt from levy, he, said defendant, being the head of a family and a resident of St. Louis County, Missouri.

EMILE THOMAS, *Sheriff.*
By J. S. WILKINS, *D'y.*

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS, }

I, Charles F. Vogel, clerk of the Circuit Court City of St. Louis, do hereby certify the within and foregoing to be a true and correct copy of execution No. 573, and of the return of sheriff thereon, as fully as the same remains in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 14th day of February, 1880.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

148 *Execution issued 4 Dec., '77, from St. Louis Circuit Court.*

State of Missouri to the Sheriff of the city of St. Louis, greeting:

Whereas, Charles Scudder, on the 9th day of July, in the year of our Lord one thousand eight hundred and seventy-seven, at our circuit court, recovered against Thomas W. B. Crews and Joseph S. Laurie the sum of three hundred and eighty-one dollars and sixty cents damages, together with twenty-three dollars and fifty cents for costs and charges in that suit expended:

These are, therefore, to command you that of the goods, chattels, and real estate of the said Thomas W. B. Crews and Joseph S. Laurie you cause to be made the damages and costs, and that you have the same before the judges of said court on the first Monday of February next, to satisfy the damages and costs aforesaid, and that you certify how you have executed this writ.

Witness, J. Fred. Thornton, clerk of our said court, with the seal thereof hereunto affixed, at office, in the city of St. Louis, this 4th day of December, in the year of our Lord eighteen hundred and seventy-seven.

[SEAL.] J. F. THORNTON, *Clerk.*

149 Upon which execution there is endoresed the following marshal's return, said return being in words and figures as follows, to wit:

Return to Execution.

No goods, chattels, or real estate belonging to the within named

defendants found in the city of St. Louis whereon to levy this writ and make the within damages and costs or any part thereof.

JOHN FINN, *Sheriff.*
By JOS. GREENWALD, *Deputy.*

ST. LOUIS, *Feb'y* 4, 1878.

STATE OF MISSOURI, } *ss.*
CITY OF ST. LOUIS, }

I, Charles F. Vogel, clerk of the Circuit Court City of St. Louis, do hereby certify the within and foregoing to be a true and correct copy of execution No. 85, and of the return of the sheriff thereon, as fully as the same remain in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 14th day of February, 1880.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

Upon said execution there also appears the following acknowledgment of part payment of said judgment, said acknowlegment being in words and figures as follows, to wit:

150 *Acknowledgment of part payment on Judgment*

T. W. B. Crews some time since paid to me, on account of this judgment, two hundred dollars, (about 1878.) Mr. Laurie never paid nor offered to pay one cent.

H. A. HAENSLER, *Plff's Atty.*

March 3, '80.

Execution, 13th Nov., 1877.

The State of Missouri to the Sheriff of the City of St. Louis, greeting:

Whereas Giles C. Letcher, on the 6th day of November, in the year of our Lord one thousand eight hundred and seventy-seven, at our circuit court, recovered against Joseph S. Laurie the sum of six hundred and twenty-eight dollars and seventy-five cents damages, together with twenty-one dollars and seventy-five cents for costs and charges in that suit expended:

These are, therefore, to command you that of the goods and chattels and real estate of the said Joseph S. Laurie you cause to be made the damages and costs, and that you have the same before the judges of said court on the first Monday of December next, to satisfy the damages and costs aforesaid, and that you certify how you have executed this writ.

Witness Charles F. Vogel, clerk of said court, with the seal thereof hereunto affixed, at office, in the city of St. Louis,
151 this 13th day of November, in the *year* of our Lord eighteen hundred and seventy-seven.

[SEAL.] J. FRED. THORNTON, *Clerk.*

Upon which execution the sheriff made the following return, to wit:

Return of Sheriff to Execution.

No goods, chattels, or real estate belonging to the within-named defendant found in the city of St. Louis whereon to levy this writ and make the within damages and costs, or any part thereof.

JOHN FINN, *Sheriff.*
By JAS. GREENWALD, *Deputy.*

St. Louis, Dec. 3d, 1877.

Clerk's Certificate

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS. }

I, Chas. F. Vogel, clerk of the Circuit Court City of St. Louis, do hereby certify the within and foregoing to be a true and correct copy of execution No. 330, and of the return of the sheriff thereon, as fully as the same remain in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 14th day of February, 1880.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

151 The State of Missouri to the Sheriff of the City of St. Louis, greeting:

Whereas Minor W. O'Bannon, on the first day of July, in the year of our Lord one thousand eight hundred and seventy-eight, at our circuit court, recovered against T. W. B. Crews and Joseph Laurie the sum of seven hundred and ninety-nine dollars and sixty-seven cents, debt, together with seventy-seven dollars and fifteen cents, for costs and charges in that suit expended:

These are, therefore, to command you, that of the goods and chattels and real estate of the said T. W. B. Crews and Joseph Laurie you cause to be made the debt and costs, and that you have the same before the judges of said court on the first Monday of April next, to satisfy the debt and costs aforesaid, and that you certify how you have executed this writ.

Witness Charles F. Vogel, clerk of our said court, with the seal thereof affixed, at office, in the city of St. Louis, this 11th day of February, in the year of our Lord eighteen hundred and seventy-nine.

[SEAL.] CHARLES F. VOGEL,
Clerk Circuit Court.

153 Upon which execution the sheriff made his return as follows, to wit:

Return of Sheriff to Execution.

No goods, chattels, or real estate belonging to the within-named defendants found in the city of St. Louis whereon to levy this writ and make the within debt and costs or any part thereof.

JOHN FINN, *Sheriff.*
By JOS. GREENWALD, *Deputy.*

St. Louis, Mo., April 7th, 1879.

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS, }

I, Charles F. Vogel, clerk of the Circuit Court City of St. Louis, hereby certify the within and foregoing to be a true and correct copy of execution No. 141, and of the return of the sheriff thereon as fully as the same remains in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 16th day of February, 1880.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

154 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following affidavit of W. C. Bragg was filed in said cause, which affidavit is in words and figures as follows, to wit:

Affidavit of W. C. Bragg.

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADMINISTRATOR DE BONIS NON of the Estate of Allan A. Kennedy, dec'd, Plff.,
vs.
THE MUTUAL LIFE INS. CO. OF NEW YORK, Deft.

On motion for rehearing of motion to set aside and annul entry of satisfaction of judgment in said cause.

This affiant, Wm. C. Bragg, being duly sworn, on his oath says that he is an attorney-at-law and a member of the St. Louis bar. That he has been intimately acquainted with T. W. B. Crews for many years, and is familiar with his handwriting. That he has examined the original petitions in the cases of Charles W. Jeffries vs. The Administrator of the estate of Allan A. Kennedy, dec'd, vs. Economical Mutual Life Insurance Company, and Charles W. Jeffries, as administrator of the estate of Allan A. Kennedy, dec'd, vs. The Mutual Life Insurance Company of New York, now among the files of the Circuit Court of St. Louis County (now city
155 of St. Louis). That said causes are numbered respectively 21,271 and 21,272, and assigned to court room No. 2, and returnable to the February term, 1872, of said circuit court, and

the petitions in both cases and in the handwriting of T. W. B. Crews, and are signed Crews and Laurie, with Halligan, att'ys for plff., also in the handwriting of said Crews.

Subscribed and sworn to before me, this day of February, 1880.

Notary Public, City of St. Louis, Missouri.

156 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following affidavit of John H. Overall was filed in said cause, said affidavit being in words and figures as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADM'R DE BONIS NON OF Allan A. Kennedy, deceased, Pl'ff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY of New York, Def't.
} On motion for rehearing.

Affidavit of J. H. Overall.

This affiant, John H. Overall, being duly sworn, on oath says, that he was associated with Col. James O. Broadhead as counsel for defendant in the last trial of the above-entitled cause; that after the trial affiant remarked to Joseph Laurie that defendant might possibly give plaintiff, by way of compromise, the original amount claimed, to wit, $10,000; but if they went on with the case it would be reversed for want of proof to sustain the verdict; that in reply thereto Laurie said the Supreme Court would not set aside the verdict, as there was no error of law. Affiant says that he never heard anything about a compromise having been made; never had any correspondence with anyone connected with the defendant on the subject of a compromise, nor as to who was representing the plaintiff, and did not know that a compromise had been effected, until some time in the month of December, 1879, when he was
157 first informed of the compromise by C. M. Stephens, a member of the bar of St. Louis.

JOHN H. OVERALL.

Subscribed and sworn to before me, this 11th day of February, 1880.

[SEAL.] CHARLES M. STEPHENS,
Notary Public.

158 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following affidavit of John T. Crowe was filed in said cause, said affidavit being in words and figures as follows, to wit:

Affidavit of John T. Crowe.

STATE OF MISSOURI, } ss.
COUNTY OF FRANKLIN, }

This affiant, John T. Crowe, being duly sworn on his oath says, that he is judge of the Probate Court of the county of Franklin aforesaid, that he has carefully examined all the settlements made and filed in the said court in the matter of the administration of the estate of A. A. Kennedy, deceased, by Charles W. Jeffries, the first administrator, and C. S. Jeffries, administrator *de bonis non* thereof, and the vouchers filed with said settlements. That Charles W. Jeffries made but one settlement of said estate, and that settlement was filed in the said probate court on the eleventh day of December, A. D. 1872, and was approved as made and filed by order of the said probate court, at the December term thereof, A. D. 1872.

That with said settlement, said Charles W. Jeffries filed in said probate the following, among other vouchers, for credits claimed by him as administrator of said estate, to wit, voucher No. 39, in words and figures as follows, to wit:

"CLERK'S OFFICE UNITED STATES CIRCUIT COURT,
159 ST. LOUIS, *Nov.* 22, 1872.

Mr. C. W. JEFFRIES,

To AUSTIN DRAKE, Dr.

For clerk's cost in case of C. W. Jeffries, adm., vs. Economical Life Ins. Co. and proceedings for Sup. Ct.....$28.20

Received payment,

AUSTIN DRAKE, *Clerk.*"

And voucher No. 40, in words and figures as follows, to wit:

"St. Louis, Mo., Nov. 22, 1872. Rec'd of Chas. W. Jeffries, adm'r of the estate of A. A. Kennedy, dec'd, the sum of two hundred, as docket fee, to be forwarded to D. W. Middleton, clerk of U. S. Sup. Ct. at Washington, D. C., in case of appeal from U. S. Cir. Ct. of Eastern District of Mo., C. W. Jeffries, adm'r of A. A. Kennedy's Est., vs. The Economical Mu. L. Ins. Co. of R. Island, and also two dollars and fifty cents for express charges on transcript. Total, 202.50.

"T. W. B. CREWS."

And voucher No. 42, in words and figures as follows, to wit:

"$100. Received, St. Louis, Mo., Sept., 1872, one hundred dollars from Dr. C. W. Jeffries, adm'r of the estate of A. A. Kennedy, dec'd, for expenses of trip to New York to attend the taking of depositions in case of C. W. Jeffries, adm'r of A. A Kennedy, vs. The Economical Mu. Life Ins. Co. of Rhode Island (in U. S. Cir. Court at St. Louis).

"T. W. B. CREWS,
Att'y for Adm'r."

160 And voucher No. 44, in words and figures as follows, to wit: "Received, Gray's Summit, Mo., of Chas. W. Jeffries, adm'r of the estate of Allan A. Kennedy, dec'd, on account of fees and expenses in behalf of said estate as attorney and legal adviser, sundry sums at different times amounting in the aggregate to four hundred dollars." "T. W. B. Crews"—were filed in said probate court, and the credits claimed by said Charles W. Jeffries, as such administrator upon the said vouchers, were upon said settlement allowed by the said probate court, and that all said vouchers were by said probate court allowed in full upon said settlement, at the December term thereof, A. D. 1872.

And that on the 22d day of January, A. D. 1873, letters of administration upon the goods of the estate of A. A. Kennedy, deceased, not administered by the said Charles W. Jeffries, were by probate court granted to C. S. Jeffries, and that said estate is still in process of administration, and the said C. S. Jeffries is still in charge thereof.

And that on the 14th day of March, A. D. 1877, at and during the regular March term, 1877, of the said probate court, the said C. S. Jeffries filed in the said probate court his fourth annual settlement of said estate, and thereupon asked and obtained credit for vouchers in words and figures as follows, to wit:

161 "Voucher No. 12." "Supreme Court of the United States, October term, 1875. No. 159.

"C. S. Jeffries, administrator of Allan A. Kennedy, deceased, to D. W. Middleton, clerk Sup. Ct. U. S., Dr., for the costs on a writ of error to the Circuit Court U. S. for the Eastern District of Missouri, taken by the Mutual Life Ins. Co. of New York against you.....$112.71
C. O. D..... 1.15
Exp..... .75

Fee book O. 259. $114.61
Test: D. W. MIDDLETON, *C. S. Ct. U. S.*

1876, June 13. Received payment, per T. W. Crews, Esq.
D. W. MIDDLETON, *C. S. C. U. S.*

And voucher No. 11:

"St. Louis, *Feb'y 1st*, 1876.

"Mr. T. W. B. Crews.

"Bought of John J. Daly & Co., Stationers, Printers and Blank "Book Manufacturers, 213 North Third street, opposite post office.
"Jan. 22. 50–77 pp. and cover briefs.....$22.50

"Mutual Life Ins. Co., N. Y., plff's in error, *vs.* C. S. Jeffries, "adm'r Allan Kennedy, dec'd., resp.

"Rec'd payment of T. W. B. Crews.
JOHN J. DALY & CO., per Salomon.

And voucher No. 7:

"$25. WASHINGTON, *Mar.* 4, '75.

"Received of T. W. B. Crews, Esq., twenty-five dollars
162 "for services rendered in the case of Jeffries, adm'r, *vs.* Economical Mutual Life Ins. Co.

"CHAS. B. BEAL."

"Mr. Beal is asst. clerk of U. S. Sup. Ct., and looks after my "cases and keeps me posted concerning them. For such services "he charges $25.00.

"CREWS."

And voucher No. 8:

WASHINGTON, D. C., *Mch.* 5, 1875.

"Mr. Chas. B. Beale to Jos. L. Pearson, Dr., Steam-power Book and Job Printer, Cor. Ninth and D streets.

"To 25 copies supplemental brief, Jeffries vs. Life Ins. Co., $5.25
Rec. pay't,

JOS. L. PEARSON.

"Less than 8 pp., $1.75 per p."

And voucher No 41:

"U. S. Circuit Court Eastern District of Missouri, Clerk's Office,
"$20. St. Louis, Sept. 14, 1876.

"Case No. 825 of Jeffries agst. Mut. L. Ins. Co.

"Received of T. W. B. Crews, for pl'ff., the sum of twenty dol- "lars as a deposit to secure the costs of clerk in the above-entitled "cause.

"Dep. receipt No.

M. M. PRICE, *Clerk.*
By A. P. SELBY, *Deputy.*"

And that upon said fourth settlement said C. S. Jeffries, as administrator of said estate, was upon said vouchers credited with the sums mentioned in the said vouchers filed with
163 said fourth settlement.

And that there is nothing of record in the records of said probate court nor among the papers on file therein showing or tending to show any contract between any administrator of said estate, and any attorney or attorneys for the transfer of any interest in any life insurance policy, in the proceeds of any life insurance policy, or in the proceeds of any litigation upon any life insurance policy or policies; nor authorizing any administrator of said estate to give or contract to give the proceeds or any interest in the proceeds of any litigation upon any insurance policy or policies to any lawyer or lawyers, in consideration of legal services or for any consideration, nor otherwise.

JNO. T. CROWE.

Subscribed and sworn to by the above-named John T. Crowe, judge of the Probate Court of Franklin County, Missouri, at Union, in the said county, this 12th day of February, A. D. 1880, before me, the undersigned notary public. Witness my hand and seal.

[SEAL.] EDWIN H. JEFFRIES,
Notary Public, Franklin Co., Mo.

Commissioned Feb'y 6th, '79.
Qualified " 14th, '79.
Term expires " 6th, 1883.

164 STATE OF MISSOURI, } ss.
COUNTY OF FRANKLIN, }

I, John T. Crowe, judge and *ex-officio* clerk of the probate court of the county of Franklin aforesaid, hereby certify that the copies of vouchers numbered 39, 40, 42 and 44, and 12, 11, 8, 7 and 41, contained in the foregoing affidavit, and being the matter in quotation marks contained in the said affidavit, are true copies of vouchers filed and now on file with the first and fourth settlement of said estate in the said probate court, and allowed to Charles W. Jeffries and C. S. Jeffries respectively by the said probate court, as set forth in the said affidavit.

Given under my hand and the seal of said probate court, at office in Union, in the said county of Franklin, this the 12th day of February, A. D. 1880.

[SEAL.] JOHN T. CROWE,
Judge and ex-officio Clerk.

165 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following affidavit and exhibits of Joseph Maguire was filed in said cause, said affidavit and exhibits being in words and figures as follows, to wit:

In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADM'R D. B. N. OF ESTATE OF A. A. Kennedy, dec'd, Pl'ff,
vs.
THE MUTUAL LIFE INS. CO. OF NEW YORK, DEF'T.

Affidavit of Joseph Maguire.

On motion of plaintiff for rehearing of motion to set aside entry of judgment.

STATE OF OHIO, } ss.
CITY OF CINCINNATI, }

This affiant, Joseph Maguire, being duly sworn, on his oath says that from 1863 until its dissolution in 1880 he was a member of the firm of John A. Griffith & Co., doing a mercantile business in the

city of Cincinnati, Ohio; that about the years 1870 to Crews & Laurie were the attorneys in St. Louis of said firm; that at first our acquaintance was with said Crews, and while he gave our business his personal attention we had no occasion for complaint;
166 that afterwards said Laurie took our business, which was chiefly collections, more particularly into his hands, and about 1872 and 1873 remittances from our said attorneys were not made to us as they should have been; that about the month of June, 1873, affiant went to St. Louis, met Mr. Laurie and demanded a settlement; that said Laurie admitted that he had collected and appropriated money belonging to our said firm and made promises about refunding it, and asked affiant to wait on him, and not to speak to Crews on the subject, as he did not want Crews to know about the matter.

That affiant then called on Crews, who seemed surprised and totally ignorant of the condition of our account with his firm and of the fact that any money had been collected which had not been remitted, and refused to give us any satisfaction until he could see said Laurie.

That said Laurie was not at his office, and affiant waited a day or two in St. Louis for said Crews to see him; that finally said Crews reported to affiant that he had met said Laurie on the street, & that Laurie had admitted to him that he, Laurie, had collected the money due our firm from A. Gershon, J. C. Zalle, and others, but had lost it gambling, & was totally unable to replace it. Affiant states
167 that the sums we then knew about having been so collected and not paid over amounted to about $1,141.33. That said Crews then and there paid affiant, to the best of his recollection, the sum of $141.33 in cash, and executed and delivered to affiant his own individual promissory notes, amounting to $1,000.00, payable to John A. Griffith & Co. That said Laurie could not be found at the time and did not sign said notes. That shortly afterwards affiant & said Crews & Laurie met in the store of F. M. Wood, on Olive street, in St. Louis, & said Laurie asked affiant to take his (Laurie's) individual note & to release said Crews from liability on account of said money so appropriated by him, and promised if we would do so that he would assign and turn over to us any fees that would or might be coming to him to secure the same. He admitted that he had collected the money & appropriated the same, & expressed his great regret for his conduct & for the wrong he had inflicted on said Crews thereby, and spoke of his obligations to said Crews for past favors and acts of friendship, & further promised, if permitted to do so, to go on and pay us himself & thus protect said Crews.

That affiant refused to release said Crews, & on the contrary exacted security for the payment of said notes, & said Crews thereupon placed a note or bond of Franklin
168 County, Mo., for $500.00 in the hands of said Wood to be as security for the payment aforesaid, and said Laurie

promised to assign his interest in certain fees that would be due the firm of Crews & Laurie, but did not at that time do so. That in fact, while I was in St. Louis at that time, said Laurie kept out of the way and was hard to find. That subsequently about May, 1874, affiant in the meantime ascertained that Laurie had collected about $105 from one D. S. Thompson, in addition to the amount heretofore mentioned, and which he had not accounted for, informed Crews of the fact and an arrangement was made for a meeting of Crews and Laurie and affiant at the store of F. M. Wood on Olive street, and after a conversation there, in which Laurie admitted having collected about $100 from the Thompson claim, it was arranged that Laurie and Crews should give us their joint note for a balance of eleven hundred dollars, which note Laurie drew up and signed and then Crews signed. And that Laurie should assign to us his interest in a judgment against the Pacific Railroad for $5,000, his interest being $1,250. He afterwards made the assignment, but affiant was informed that the case was lost in the Supreme Court of U. S. Afterwards, in 1875, affiant ordered suit upon said note and a judgment was rendered in the U. S. circuit court at St. Louis against Laurie & Crews, which yet remains unsatisfied.

169 That Laurie has never paid a dollar of the money so taken by him, and we have received only what was paid by Crews.

That when Laurie's delinquency was first made known to Crews, he declared his intention to dissolve partnership with Laurie forthwith, but affiant advised and insisted that he should not do so until Laurie assigned the fees above mentioned.

The dates of facts above given are according to my best recollection.

JOS. MAGUIRE.

Sworn to before me and subscribed by said Joseph Maguire in my presence, this 6th day of March, 1880.

[SEAL.] CHAS. H. JONES,
Notary Public in and for Hamilton County, Ohio.

170 EXHIBIT.

ST. LOUIS, *May 6th*, 1874.

Five months after date we promise to pay to the order of Jno. A. Friffith & Co. the sum of eleven hundred dollars, with interest from date at rate of ten per cent. per annum.

(Signed) JOSEPH S. LAURIE.
T. W. B. CREWS.

A copy. Attest:

M. M. PRICE, *Clerk.*
By A. P. SELBY, *D. C.*

Note filed August 26, 1875.
Attest:

M. M. PRICE, *Clerk.*
By A. P. SELBY, *D. C.*

171 EXHIBIT.

In U. S. Circuit Court Eastern District of Mo.

JNO. A. GRIFFITH ET AL.
vs.
JOSEPH S. LAURIE ET AL.

In this case judgment by stipulation was rendered on the 3d day of November, 1876, for $1,377.90.

Plaintiff being represented by Joseph T. Tatum, and defendants by Jos. S. Laurie.

No satisfaction entered of record.

Attest: M. M. PRICE, *Clerk.*
By A. P SELBY, *D. C.*

March 4, 1880.

172 EXHIBIT.

In the Circuit Court of St. Louis County, February Term, 1874.

Thursday, February 5th, 1874.

MARGARET MAHER
23564 *vs.* Judgment.
PACIFIC RAILROAD.

And now again, at this day, come said parties, by their respective attorneys, and also come the jury heretofore sworn in this cause, and the trial being fully terminated, the jury aforesaid, on their oaths aforesaid, find for the plaintiff, and asses her damages herein at the sum of five thousand dollars. It is, therefore, upon the finding of the jury as aforesaid, considered by the court that the plaintiff recover of said defendant the damages aforesaid, in form aforesaid assessed, and also her costs and charges herein expended, and have execution therefor.

For value received, I do hereby assign and transfer one-half of the judgment of which this is the margin to Crews and Laurie.

MARGARET her × mark MAHER. [SEAL.]

St. Louis, Feb'y 5th, 1874.

Attest: JNO. LEWIS, *Clk.*

For value received, I do hereby assign and transfer to Joseph Maguire, for the use of the firm of Jno A. Griffith & Co.,
173 all my right, title, and interest in the judgment of which this the margin.

JOS. L. LAURIE. [SEAL.]

St. Louis, May 21st, 1874.

Attest: JNO. LEWIS, *Clk.*

STATE OF MISSOURI, } ss.
CITY OF ST. LOUIS, }

I, Charles F. Vogel, clerk of the Circuit Court City of St. Louis, do hereby certify the foregoing to be true copies of judgment and assignments in the above-entitled case, as fully as the same remains of record in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at office, in the city of St. Louis, this 20th day of February, A. D. 1880.

[SEAL.] CHAS. F. VOGEL, *Clerk.*

174 And afterwards, to wit, on the 13th day of March, A. D. 1880, the following affidavit of A. P. Selby was filed in said cause, said affidavit being in words and figures as follows, to wit:

C. S. JEFFRIES, ADM'R
vs.
MUTUAL LIFE INS. CO. } On motion to vacate satisfaction of judgment.

Affidavit of A. P. Selby for Respondent.

A. P. Selby, being duly sworn, deposes and says that, at the request of the attorney for defendant, J. R. Shepley, Esquire, he examined some of the records of the Circuit Court of the United States in said Eastern District of Missouri, and so far as his examination went, he found no other mode of entering satisfaction of judgments in said court than by an acknowledgment of satisfaction endorsed on the margin of judgment entry and attested by the clerk or a deputy of said court.

January 26, 1880. A. P. SELBY.

Subscribed and sworn to before me, this 13th March, 1880.

M. M. PRICE,
Clerk U. S. Cir. Ct., E. D. of Mo.
By T. L. CRAWFORD, *D. C.*

175 And afterwards, to wit, on the 10th day of March, A. D. 1880, the following further proceedings were had of record in said cause, to wit:

C. S. JEFFRIES, ADMINISTRATOR, &C.,
vs.
MUTUAL LIFE INSURANCE COMPANY.

Supplemental Motion Overruled.

Now comes the plaintiff, by attorney, and by leave of court, files supplemental motion for a rehearing on the motion to vacate the satisfaction of judgment herein.

Upon consideration whereof, and being fully advised in the premises, the court orders that said supplemental motion for a rehearing be denied.

And afterwards, to wit, on the 13th day of March, A. D. 1880, the following further proceedings were had and appear of record, to wit:

C. S. JEFFRIES, ADMINISTRATOR, &c.,
vs.
MUTUAL LIFE INSURANCE COMPANY OF NEW YORK.

176 Now comes the plaintiff, by his attorney, and presents to the court his bill of exceptions, which is allowed, signed and ordered to be filed as part of the record herein; and said plaintiff also presents to the court a writ of error to remove this cause to the Supreme Court of the United States, and a citation citing and admonishing the said defendant to appear at a Supreme Court of the United States at the next term thereof, on the second Monday of October next, which said writ of error is allowed and said citation signed by the judge; and the said plaintiff also presents to the court his bond in the penal sum of five hundred dollars, which is approved and ordered to be filed.

Said bill of exceptions is in the words and figures following, to wit:

177 In the Circuit Court of the United States for the Eastern District of Missouri.

C. S. JEFFRIES, ADM'R DE BONIS NON OF THE ESTATE of Allan A. Kennedy, dec'd, Pl'ff,
vs.
THE MUTUAL LIFE INSURANCE COMPANY OF NEW York, Def't.

Bill of Exceptions.

Be it remembered that on the 26th day of January, A. D. 1880, this cause came on to be heard on the motion filed by plaintiff to vacate and annul the entry of satisfaction of judgment made in the above-entitled cause, and upon the affidavits, proofs, and exhibits filed by plaintiff and defendant.

And the same being submitted to the court, the court on the same day overruled said motion and refused to vacate and annul said entry of satisfaction of said judgment, to which action and ruling of the court overruling said motion and refusing to vacate and annul said entry of satisfaction of said judgment plaintiff then and there objected and excepted.

178 And thereupon plaintiff on the same day filed his motion for a new *hear* hearing of said cause, which is as follows. (See page 116.)

And afterwards, to wit, on the 10th day of March, 1880, plaintiff, by leave of the court, filed a supplemental motion for a rehearing, and affidavits and exhibits in support of the same, which

supplemental motion and affidavits and exhibits are as follows. (See page 118.) And the same being submitted to the court, said motion for a rehearing was on the same day overruled and refused, to which action and ruling of the court in overruling and refusing said motion, plaintiff then and there objected and excepted. And to each and every ruling of the court in refusing and overruling the motions of plaintiff herein, plaintiff now here again objects and excepts, and now tenders this his bill of exceptions and prays that the same may be signed and sealed and made a part of the record, which is accordingly done, this 13th day of March, 1780.

(Signed) SAMUEL TREAT. [SEAL.]

Said bond is in words and figures following, to wit:

179 Know all men by these presents, that we, C. S. Jeffries, adm'r *de bonis non* of A. A. Kennedy, decs'd, John C. Davis, James M. Sawyer, and Chapman W. Wade, are held and firmly bound unto the Mutual Life Insurance Oompany of New York, in the full and just sum of five hundred dollars, to be paid to the said Mutual Life Insurance Company of New York, heirs, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents. Sealed with our seals, and dated this twelfth (12th) day of March, in the year of our Lord one thousand eight hundred and eighty.

Whereas, lately at the September term, 1879, of the Circuit Court of the United States for the Eastern District of Missouri, in a suit depending in said court, between C. S. Jeffries, adm'r *de bonis non* of the estate of A. A. Kennedy, deceased, plaintiff, and the Mutual Life Insurance Company of New York, defendant, judgment was rendered against the said plaintiff upon a motion to vacate and annul the entry of satisfaction of judgment, and the said plaintiff having obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Mutual Life Insurance Company of New York, citing and admonishing it to be and appear at a Supreme Court of the United States, to be holden at Washington, the second Monday of October next:

Now the condition of the above obligation is such, that if the said C. S. Jeffries, adm'r *de bonis non* of the estate of A. A. Kennedy, deceased, shall prosecute said writ to effect, and answer all damages and costs if fail to make good his plea, then the above obligation to be void, else to remain in full force and virtue.

Sealed and delivered in presence of

C. S. JEFFRIES. [SEAL.]
JOHN C. DAVIS. [SEAL.]
JAS. M. SAWYER. [SEAL.]
C. W. WADE. [SEAL.]

Approved by
SAMUEL TREAT, *Judge.*

180 UNITED STATES OF AMERICA, } ss.
EASTERN DISTRICT OF MISSOURI, }

I, M. M. Price, clerk of the Circuit Court of the United States in and for the Eastern District of Missouri, do hereby certify that the writing hereto attached to be a true transcript of the record and proceedings and exhibits in case No. 825 of C. S. Jeffries, administrator *de bonis non* of the estate of Allan A. Kennedy, deceased, plaintiff, against The Mutual Life Insurance Company of New York, defendant, as fully as the same remain on file and of record in said case in my office.

In witness whereof, I hereunto subscribe my name and affix the seal of said court, at office, in the city of St. Louis, in said district, this 1st day of September, in the year of our Lord eighteen hundred and eighty.

[SEAL.]

M. M. PRICE,
Clerk of said Court.
By A. P. SELBY, *Deputy.*

(Endorsed on cover:) E. Missouri C. C. U. S. No. 203. C. S. Jeffries, administrator of Allan A. Kennedy, deceased, plaintiff in error, vs. The Mutual Life Insurance Company of New York. Filed 20th November, 1880.

110-305

110-315

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

C. S. JEFFRIES, Administrator *d. b. n.* of the Estate of Allen A. Kennedy, deceased,
Plaintiff in Error.
vs.
THE MUTUAL LIFE INSURANCE COMPANY, OF NEW YORK.
Defendant in Error.

No. 203.

STATEMENT AND BRIEF FOR PLAINTIFF IN ERROR.

T. W. B. CREWS and
JOHN W. BOOTH,
Attorneys for Plaintiff in Error.

Pierce Bros Printers, 118 North Third Street.

IN THE

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1883.

C. S. JEFFRIES, Administrator *d. b. n.* of the Estate of Allen A. Kennedy, deceased,

Plaintiff in Error.

vs.

THE MUTUAL LIFE INSURANCE COMPANY, OF NEW YORK.

Defendant in Error.

No. 203.

(Error to the Circuit Court of the United States for the Eastern District of Missouri.)

STATEMENT FOR PLAINTIFF,

The question here presented arises upon a motion, made by plaintiff in error, to vacate, cancel and annul the entry of satisfaction of a judgment rendered in the Circuit Court of the United States for the Eastern District of Missouri, in favor of plaintiff and against defendant, and which entry of satisfaction was made on the margin of the record by Joseph S. Laurie, one of the attorneys of record in said cause for plaintiff, without plaintiff's knowledge or consent.

A brief history of antecedent facts is necessary to a full understanding of the case.

In August, 1871, Allen A. Kennedy died, at Pacific, in Franklin County, Missouri, intestate, and leaving an estate,

variously estimated at the time at from $50,000 to $100,000, and leaving as his heirs-at-law, his widow, who was making her home temporarily at Elmira, New York, and several brothers and sisters and nephews and nieces in the Dominion of Canada. Kennedy was a railroad contractor, but he owned real estate at Pacific and had other interests there, and his home had been there for a year or two previous to his death, which was after a very short illness. Immediately after his death, his widow and several members of the family from Canada went to Pacific, and, all being members of the Catholic Church and strangers, very soon made the acquaintance of James Halligan, Esq., also a Catholic, resident at Union, the county seat of Franklin County, and generally recognized as the leading lawyer in the county and in the judicial district, and placed their interests in his charge. (Mr. Halligan died in 1879, before the motion in this case was filed.) Upon the recommendation of Mr. Halligan, Dr. Charles W. Jeffries, a physician (but, not then engaged in the practice of medicine,) living on his farm near Pacific, was chosen as a suitable person to administer upon the estate, and being urged to do so by the parties in interest and their said attorney, consented to act as such administrator. A large bond was required and he was able to give it, and besides, he was qualified by reason of his attainments and business experience.

Kennedy had two policies of insurance on his life, one for $5,000 in the Economical Insurance Company of Rhode Island, and one for $10,000 in the Mutual Life Insurance Company of New York. The administrator made the required proofs and attempted to collect these policies, but the companies refused payment, alleging, first, that Kennedy was an inebriate and died from drunkenness, and, secondly, that in his application for insurance, which, it was contended, was a warranty, he represented himself as single, when, in fact, he was married. In October, 1871, Dr. Jeffries handed these policies to T. W. B. Crews, with the request that he would institute legal proceedings against the

companies for their collection. Crews was the brother-in-law of Dr. Jeffries and resided a few miles from him on a farm near Gray's Summit, in Franklin County, but practiced law and kept his office in St. Louis. He had as a partner, at the time, Joseph S. Laurie, a much younger man than himself, who resided in St. Louis.

Before bringing the suits, Crews, who was fully informed as to the line of defense, took steps to hunt up the evidence, and, with that view, he found that one Richards, a photographer, who then resided at Jerseyville, Ill., was the agent or solicitor who had taken the application of Kennedy for the policy in the Mutual Life Insurance Company of New York, and accordingly arranged for an interview with him. In that interview Richards stated, in effect, that the company ought not to set up as defense the misrepresentation in the application, as that was his mistake, and not the mistake or misrepresentation of Kennedy; that he was a comparative stranger at Pacific, and that he found Kennedy sitting around at the hotel there, and got the idea, from some source, that he was a wealthy bachelor; saw that he was convivial in his habits, and cultivated his acquaintance with a view to business; that, as soon as he got Kennedy's consent to take out a policy, he wrote out the application for him, and, as to the question, "married or single?" he remembered that he filled the blank with the answer "single," without asking the question at all; and his memory was distinct on the subject, because he soon afterwards learned, to his astonishment, from Geiger, the hotel proprietor, that Kennedy was married; that when he had finished writing the application, he shoved it over the table to Kennedy, who signed it without reading it; and that he then took it to a friend of Kennedy's for verification, etc. At the time of this conversation, Richards had been discharged from the service of the company, but after the suit was filed he was reinstated as agent.

Suit was instituted on both policies in the Circuit Court of St. Louis County, returnable to the February term, 1872.

On application of defendants, they were removed to the Federal Court and docketed to the October term, 1872. Before the trial was reached, defendants in both cases abandoned the defense of drunkenness and rested their cases on the single issue of breach of warranty by reason of misrepresentation in the application. In the case of the Economical Insurance Company, the judgment was for defendant upon demurrer to the answer, and this was affirmed in the Supreme Court. The case is reported in 22 Wallace, p. 47. The case against the Mutual Life Insurance Company of New York was tried by the court, without a jury, at the October term, 1873. On the trial, Richards was a witness, called by plaintiff, but his memory was defective and he denied much of his statement to Crews, heretofore mentioned, or so prevaricated and evaded the questions propounded to him as to amount to a denial. As he was plaintiff's witness, plaintiff was surprised by his testimony and in no condition to contradict him. (This fact was afterwards alluded to in the brief filed for plaintiff, in the same cause, in the Supreme Court.) But, notwithstanding this, the court rendered judgment for plaintiff for $11,113, and defendant took the case to the Supreme Court, where it was reversed and remanded on the authority of the Economical case above mentioned.

Prior to these trials, early in January, 1873, Dr. Charles W. Jeffries died, and his father, Cuthbert S. Jeffries, the plaintiff herein, whose residence was also in Franklin County, was appointed administrator *de bonis non* of Kennedy's estate, and duly qualified and entered his appearance to the suits. This cause against the Mutual Life Insurance Company of New York was again tried in the Circuit Court at St. Louis, by the court, without a jury, at the spring term, 1877.

To counteract the testimony of Richards, who was the only witness in the case, it was arranged between Crews and Laurie, plaintiff's attorneys, that if he testified as he did on a former trial, that Crews should take the stand and testify as to the conversation in which he had admitted the writing

of the application hereinbefore set out. Accordingly, at the trial, Crews announced that, as he expected to be a witness, he would allow his associate, Laurie, to conduct the case for plaintiff and would not take an active part in the trial. Crews had previously conducted the proceedings and felt a delicacy in examining an adverse witness and then going on the stand to contradict him, and for that reason only, he gave up the examination of the witnesses to Laurie, for that was the chief part of the trial. Richards was called by defendant and testified as on the first trial, but more direct and positive than then, and Crews took the stand and contradicted him. The court again gave judgment for plaintiff, but afterwards, on motion of defendant, set the judgment aside and awarded a new trial.

At the fall term, 1877, a third trial was had, this time before a jury, and as before, Crews, intending to testify, if necessary, to contradict Richards, again explained his position to the court and stated that he would not take an active part in the trial. Richards was called for defendant, but merely to prove the signature of Kennedy to the application, and he was then cross-examined by Laurie for plaintiff as to his admissions to Crews, with a view to contradicting him, but the court held that plaintiff had made him his own witness by cross-examining him as to matters not touched upon in the examination-in-chief, and would not permit Crews to testify. The verdict of the jury, however, was for plaintiff. Again defendant sued out a writ of error and took the case to the Supreme Court, where it was made returnable to the October term, 1878.

On the 11th day of March, 1879, the writ of error was dismissed on stipulation, bearing date February 14th, 1879, signed "Joseph S. Laurie, attorney for defendant in error," and "O. H. Palmer, plaintiffs' attorney." (Transcript, p. 29.)

On the 3d of December, 1879, T. W. B. Crews addressed a letter to Mr. Middleton, clerk of the Supreme Court, inquired when the records would be printed in the

case of Jeffries, administrator, etc., v. the Mutual Life Insurance Company, of New York, to which answer was returned, dated December 6th, informing him that the writ of error in said cause had been dismissed on the 11th of March preceding. This answer came to the hands of Crews, in St. Louis, on the 11th of December, but gave no other information, and was a complete surprise to him. He took immediate steps to have an explanation and learn the facts. He tried to find Laurie, but did not succeed in doing so until late in the afternoon of Saturday, December 13. Then, for the first time, he learned that a compromise of the suit had been entered into between Laurie and the attorney of the company in New York, O. H. Palmer, Esq. Crews asked Laurie by what authority he settled the case and for particulars. Laurie answered that he had the power, as attorney, to compromise, and had compromised for $9,000, defendant to pay the costs; and added that he had the money yet. Crews disputed his authority, and stated that it would not be ratified. Laurie answered that he had a decision of the Supreme Court of the United States on the subject, giving him the power to compromise, and that he had done the best thing possible for the plaintiff, and that affiant would think better of it when he was less excited. Crews asked him why he had not mentioned the matter to Mr. Jeffries or to him, and he replied that Crews had nothing to do with the case, that he was not an attorney in it, and further stated that he was waiting for the Franklin County bonds suit to be determined; that Crews had consented to the action of the county court of Franklin County in refusing to pay the balance of the fee allowed us, and he proposed to hold on to this money until that matter was settled. Crews denied his statements, and asked him what that had to do with the Kennedy estate, and he answered that he considered Mr. Jeffries and Crews as one. Crews told him that he could not have been made to believe he would do such a thing, and that he would not have believed he would treat him in such a manner, when Laurie replied that he would do so

again, and Crews left him. Laurie followed him into the hall and asked him to come to his office on Monday, but Crews refused and told him that if he wanted to see him (Crews) he knew where his office was, and further remarked that he intended to have execution issued against defendant. (See affidavit of Crews, pp. 27 and 28 of transcript.)

We quote here Laurie's account of this conversation, which is as follows: "Crews asked me to explain a letter which he had received from the clerk of the United States Supreme Court, in regard to the dismissal and compromise of the Jeffries case, a letter he had received that morning. I replied, stating how the compromise had been made, the amount received, and further that I had the money due the estate in the hands of a third party and would pay over to him at once as the individual attorney of his father-in-law upon a proper receipt. He asked me why I had concealed the matter. I replied that I wanted to see a settlement of the Franklin County cases. I told him that if he questioned it, I would show him that it was absolutely that amount saved, and invited him around to my office on Monday to examine all the papers and letters. He made no reply and rose to his feet apparently excited, and said repeatedly that no one could have convinced him that I would have treated him so. He did not complain of the settlement, but was grieved, as he professed, at the manner in which I had treated him. I replied, 'Colonel, this is no place to discuss private matters. I have done nothing but what was right and what I would do over again.' He made no reply, but started to leave the office. As he reached the outer door I called out to him again if he would come to my office Monday. He replied in a mysterious, threatening manner that I should see him somewhere abouts. I at once followed him out into the hall, remarking that he was excited then, but if he would call at my office we could talk the matter over and his recollection would be refreshed. He again replied in the same manner, to which I replied, if he wanted to act honestly, he would come to my office, but

if he preferred any other course, he would always find me prepared."

And then he adds, "The next thread in the matter was that there was a motion filed in this court. If the administrator *de bonis non* had been an independent or disinterested man, I would have gone to him at once and paid over the money of the estate, but I knew that, although Mr. Jeffries had always borne the highest character for honesty and integrity, that Crews' influence over him was such that he would in honest simplicity accept every statement as true, and act accordingly." (Laurie's affidavit, pp. 22 and 23.)

Ten months had elapsed since Laurie had made this pretended compromise and received, according to his own statement, $9,000 in money, and in all that time not a word had escaped him on the subject to any party interested, and when asked as to his authority, he cited a decision of the Supreme Court; when asked why he had concealed the fact, he gave as a reason that he was waiting for the Franklin County bond suits to be determined (they had then been in court many years, and were apparently as far from determination as when they were begun), and closes with the statement that, if Crews "wanted to act honestly," (words he never used, in fact,) he would come to his office and allow himself to be convinced that Laurie was a very deserving, honest fellow, and had acted very properly in all that he had done; and then the reason why he did not pay over the money to Mr. Jeffries was, that he was not a disinterested party ,and in his honest simplicity might refuse to allow himself to be convinced by Laurie.

After this interview with Laurie, Crews immediately called on the general agent of the defendant, in St. Louis, and then wrote to the company in New York City and also to the attorney, Mr. Palmer, informing them of the circumstances under which he had obtained the facts in relation to the pretended compromise, and that it was without authority, and would not be confirmed or ratified; and also wrote to

plaintiff, informing him of what had occurred, and telling him of what he had done in the premises.

Early on the Monday morning following, (December 15, 1879) Laurie went to the office of the clerk of the United States Circuit Court and made the following entry on the margin of the record of the judgment: "I hereby enter satisfaction of this judgment in full, this 15th day of December, 1879. C. S. Jeffries, Administrator, etc., by Joseph S. Laurie, his attorney;" which entry was attested thus: "Attest, M. M. Price, Clerk, by T. L. Crawford, D. C." At the time of making the entry, Laurie requested Crawford to say nothing about the entry of satisfaction of said judgment at present." (See affidavit of Crawford, Transcript p. 9) Of Mr. Selby, another clerk, who was present, "he requested that said entry of satisfaction had been made on the record shall not be given to the reporters of the press, assigning as a reason therefor that he wished to have a settlement with Mr. Crews;" and Mr. Selby added that no record of said entry was made, either on the minutes of the court or elsewhere, other than on the margin of the judgment, and no leave of court was had in the premises. (Affidavit of Selby, Transcript, p. 32.)

On the same day, however, and within an hour or two thereafter, Crews discovered the entry of satisfaction, and thereupon immediately drafted and filed the motion on which this action is based. (The motion is set out in full in the transcript, pp. 3 and 4.) (The Circuit Court was in session at the time and entertained the motion and directed that notice of the motion should be served on Laurie and defendants, but declared that he would not hear oral testimony; that the parties might submit affidavits and he would pass upon the facts presented in that shape. This fact does not appear in the Record.)

Notices were served and all parties filed affidavits, which, as such evidence generally does, took a wide range and contained much irrelevant matter. The affidavits being filed, the court called the case for hearing on the 26th of January,

1880, (at a time when Crews was unavoidably absent from the city and knew nothing of it.)

On the part of the plaintiff, the evidence was incontrovertible that no authority to compromise had ever been given by him. C. S. Jeffries testified (Jeffries' affidavit, Transcript, pp. 5 and 6) "that he had never, at any time or place, given permission to any attorney, or other person, to compromise or settle said suit, either by word or in writing, or otherwise, nor had he authorized or consented to, or in any way ratified any settlement or compromise, nor authorized any satisfaction of the judgment in said cause, nor of any part thereof; that he had never received any money whatever upon said judgment and had never heard that any settlement, or pretended settlement, had been made therein until Monday, Dec. 15, 1879, and then learned it by letter from T. W. B. Crews."

He further stated that he supposed said cause was being conducted on his part by Crews and did not even know that Laurie was an attorney in the cause; that he had no recollection of having ever communicated with Laurie on the subject of said suit in any manner or form whatever, and that as soon as he heard his conduct in this matter he wrote to defendant, denying Laurie's authority to compromise, and also wrote to the Clerk of the Supreme Court of the United States, withdrawing all authority of Laurie to represent him.

But on the part of defendant it was not contended on the hearing that Laurie had any authority from plaintiff, or that he had consulted with plaintiff, or that plaintiff knew anything whatever of Laurie's conduct in this matter. Defendant relied on a pretended contract which Laurie swore that Dr. C. W. Jeffries, the first administrator, in his lifetime admitted had been made with Crews. This is what he says about it, after a good deal of stuff that he pretends passed between Crews and himself, all of which Crews denies:

"The opinions of affiant as aforesaid were duly reported to Crews, and it was agreed between Crews and affiant that

we would prosecute the cases even to the Supreme Court upon a contingent fee of one-half the amount necessary in each case, the attorneys to have authority to compromise either case at whatever terms and in whatever manner it should appear to the attorneys to be in the interest of the estate.

"Crews replied that this was all right, and he would make the agreement with his brother-in-law, the administrator."

Sometime afterward, affiant cannot state exactly how long, Charles W. Jeffries, the administrator, who was a resident of Franklin County, and in the habit of visiting the office of Crews & Laurie, and with whom affiant was well acquainted, visited the office of Crews & Laurie, and in the course of the conversation he referred to those cases, asking me about them, their condition, and my opinion in reference thereto, and in reply informed him in full, stating the desperate character of the Economical case and speaking more hopefully of the Mutual Life cases, stating the different legal propositions involved therein. He incited me (including Crews, who was not present) to great exertion, remarking that if we did not gain the cases of course we would receive no fees. I replied that I understood the matter, and, according to my understanding from Crews, Crews and myself as the attorneys were to receive a contingent fee of one-half the amount received in each case, with privilege of compromising such cases in whatever manner the interests of said estate, in the opinion of counsel, seemed to require. Said Jeffries acquiesced and affirmed the statement as to both cases.

"Some other general remarks were made about courses which the cases would pursue and the time necessary to reach a final adjudication. The aforesaid statement of the fee and query in regard thereat to Jeffries by Laurie were purposely made in order to obtain real information, said Crews having on former occasions deceived affiant in regard to Franklin County cases."

(Laurie's affidavit, transcript, pp. 14 and 15.)

This is the only evidence in relation to said contract; there is not one scintilla besides this naked statement of Laurie. It will be observed that no date is given to this alleged conversation, and no circumstances by which it could be verified. It is not pretended that it was ever communicated to Crews, Halligan, C. S. Jeffries, or any one else. When Laurie's affidavit was made, Dr. Jeffries had been dead just seven years. In all that time no single individual could be found who had ever heard of such a conversation. It will be remembered that no reference to it was made in the conversation between Crews and Laurie on Saturday, December 13th. Then he placed his authority to compromise upon a decision of the Supreme Court; and it will be seen hereafter that he never alluded to a contract or agreement with Dr. Jeffries, in his correspondence or in his interview with O. H. Palmer, the attorney of defendant. It will be found that in all that passed between Laurie and Palmer he claimed to be the confidential friend and agent of C. S. Jeffries, the present administrator, and as deriving his authority from him alone.

John T. Crowe, the Judge of the Probate Court of Franklin County, in his affidavit (transcript. pp. 68, 69 and 70), states that Dr. Jeffries made but one settlement as administrator of said estate, and that was on December 11, 1872; that in that settlement he is credited with various amounts paid as costs and expenses in respect to these insurance cases, including $100 to Crews for trip to Buffalo, N. Y., for depositions (all set out in full in his affidavit), and also "with $400 paid Crews on account of fees and expenses in behalf of said estate as attorney and legal adviser;" that on the 24th of January, 1873, letters *de bonis non* were granted to C. S. Jeffries, and that said estate is still in process of administration; and then the affidavit enumerates various sums credited to C. S. Jeffries for costs and expenses paid by him in relation to said suits, and adds, "that there is nothing of record nor among the papers on file showing or tending to show any contract between any administrator of

said estate and any attorney or attorneys for the transfer of any interest in any life insurance policy, in the proceeds of any life insurance policy, or in the proceeds of any litigation upon any life insurance policy or policies; nor authorizing any administrator of said estate to give or contract to give the proceeds, or any interest in the proceeds, of any litigation upon any insurance policy or policies to any lawyer or lawyers in consideration for legal services, or for any consideration whatever."

So, we find that in his only settlement, Dr. Jeffries was allowed a credit for fees paid Crews for services to this estate, and it is not pretended that there was any litigation, other than as to these insurance policies. From that settlement, made on the 11th of December, 1872, Dr. Jeffries returned home sick, and never afterwards left his own door alive.

The pretended conversation between him and Laurie could not, therefore, have occurred after the settlement, and if, it was before, no authority of the Probate Court was asked or given, no mention made of it whatever, and in utter disregard of it he takes credit for $400, paid Crews as per voucher dated September 22, 1872, less than three months before the settlement.

But further, in corroboration of the theory that no such conversation, as is alleged between Laurie and Dr. Jeffries, ever took place, attention is requested to what occurred between Palmer, the defendant's attorney in New York, and Laurie. In doing so, it will be seen that Palmer was guilty of gross negligence, and allowed himself to be deceived and overreached by Laurie, to say the least of his conduct.

In his letter to Crews, dated New York, December 16, 1879, (transcript, pp. 8 and 9), Palmer says, "I am surprised by your letter of the 13th inst. in reference to the Jeffries case. The claim was settled on the 14th of February, 1879, with Mr. Jeffries, through his agent and attorney, Mr. Laurie, by the payment of $9,401.42. A full discharge was executed, suit discontinued and its dis-

missal from the calendar authorized. Before the final settlement we had been in correspondence with Mr. Laurie for some months, he making various propositions of closing up the litigation. I, finally, on the 6th of February, 1879, made him a final proposition, which he accepted and came on to New York, and the matter was closed accordingly. The vouchers, I believe, are full and complete. So far as the company is concerned, I take it that the authority to make the compromise with the attorney and counsel in the case can not be questioned. If Mr. Laurie had wronged his client by assuming to act without his knowledge or consent, I suppose his client can call him to account. I supposed when Mr. Laurie gave me distinctly to understand that he was acting with the knowledge of his client, he *was* acting with the knowledge and assent of his client."

(The italic is that of Mr. Palmer.)

And again, in Palmer's affidavit (transcript, pp. 35 and 36), when Laurie called upon him in New York and stated that he was ready to make the compromise and presented the original policy of insurance, he prepared a voucher which Laurie signed and delivered to him, and, thereupon, he caused a check to be drawn for $9,401.42, payable to the order of *Charles* S. Jeffries, administrator of Allen A. Kennedy, and adds: "but deponent, at the request of said Laurie, and upon his assurance that Mr. Jeffries was fully cognizant of all the facts, and that he was acting with full consent of said Jeffries, and that it was necessary to use the money in the City of New York without the delay of sending forward the check for the endorsement of said Jeffries; and deponent, relying upon said assurance, and in the belief that the said Laurie was fully authorized and empowered to act in the premises, consented to add, after the words, "pay to the order of Charles S. Jeffries, administrator of Allen A. Kennedy," the words, "or Joseph S. Laurie, att'y."

Not a word there about the pretended conversation and contract with Dr. Charles W. Jeffries, the first administrator; not a word about the Supreme Court decision that

authorized an attorney to compromise his client's suit or judgment. Could Palmer have forgotten it, or shall we more properly conclude that such an idea was not even broached to him? He is here deliberately swearing to what transpired at the meeting between Laurie and himself, writing it down in his office at his leisure. Were we justified in conjecturing that he wilfully omitted any important fact in relation to that interview? What he deposed, morover, is corroborated by the correspondence between Laurie and himself, which he attaches, in the former exhibits, to his affidavit, and is further corroborated by his letter to Crews, heretofore quoted, in which he says, "I supposed when Mr. Laurie gave me distinctly to understand that he was acting with the knowledge of his client, he *was* acting with the knowledge and assent of his client?"

But we give now Laurie's account of that meeting (transcript, pp. 19 and 20): "Mr. Palmer, I met in his office at New York; presented him the policy, and he called a clerk to make a computation of interest, which was submitted to me and found to be correct, whereupon he directed the clerk to have a check made out for that amount. This was done and the check presented to me for $9,401.42. I remarked to Mr. Palmer that the check was drawn to W. S. Jeffries, administrator *de bonis non*; and that, while I had no authority to sign his name, I had full authority to settle this case, but that, independent of that question, the attorney of record was recognized to such an extent as having an implicit authority to compromise a case; that Chief Justice Marshall had decided in 7th Cranch that such a compromise would not be disturbed unless so unjust as to be generally exclaimed against. He said he was familiar with the case, and at once inserted in the check 'or Jos. S. Laurie,' thereby making the check payable to my order. I was not familiar or acquainted with the bank to which it was addressed, and to assist me in collecting the money, he gave me a note addressed to the cashier of his own bank, which was within a few doors of his office. I then deposited the money and

received certificate in name of Jos. S. Laurie, attorney. Mr. Palmer is mistaken in stating that I said that I desired to use the money in New York City or elsewhere. I merely said I intended to return home *via* Chicago and wanted matters in such condition that I could draw for the money at once."

Not a word there about the conversation and contract with Dr. Jeffries. The only remark that could be tortured into a reference to it is where he says that he told Palmer that, while he had no authority to sign the administrator's name to the check, he "had authority to settle this case." That Laurie's memory is defective must be presumed from the description he gives of the check, if nothing else. He says it was payable to W. S. Jeffries, administrator *d. b. n.*" while Palmer, who doubtless had the check before him, says that it was made payable to the order of "Charles S. Jeffries, administrator of Allen A. Kennedy." Again: it will be seen from the correspondence that the amount had been already agreed on, and no computation of interest was necessary or mentioned by Palmer, but Laurie says that Palmer "called a clerk to make a computation of interest."

It will be observed that both Laurie and Palmer were so little acquainted with the plaintiff that they invariably misdescribed him. The first administrator was Charles W. Jeffries; his successor, the present administrator, is Cuthbert S. Jeffries (transcript p. 61), but up to the time attention was called to it by these proceedings they describe him as Charles S., W. S., etc.—never as C. S. or Cuthbert S. Jeffries.

Now, we return to the correspondence between Laurie and Palmer, to which allusion is made in the latter's affidavit, the letters being filed as exhibits thereto. (Transcript pp. 36 to 41 inclusive.)

In the first, dated May 16, 1878, Laurie offered to submit the case under rule 20 of the Supreme Court, or to deduct $2,500, by way of compromise. To this there was no answer, and Laurie again writes, under date of June 7th,

1878, complaining of the fact. On June 12th, 1878, Palmer answers, declining the proposition to submit the case, and, also, declining the offer of settlement.

Laurie's next letter is dated October 19th, 1878, in which he says that he is willing to offer "any reasonable inducement" to secure Palmer's consent to a submission of the case under the rule.

Palmer's reply is dated November 22d, 1878, in which he says that if there must be an argument in the Supreme Court, which he had hoped to avoid, he prefers it should be an oral one. He then refers to a proposition previously made, which he states was to pay the claim, less a rebate of $5,000, which was the most favorable he could get authority to submit, and hopes, upon reflection, and in view of all the circumstances, that Laurie would settle on those terms.

Laurie answers under date of November 29th, 1878, saying: "Yours of the 22d inst. is before me. I have delayed answering thus far for the purpose of *consultation and reflection*. You propose, in the case of Jeffries, administrator, v. the Mutual Life Insurance Company, of New York, to pay the claims, less a rebate of $5,000. In order to close this controversy, which, from its nature, is doubtless disagreeable to the company, and certainly tedious to us, I am willing to make liberal concessions. The amount of the claim, including interest, is, in round numbers, $14,440. I am willing to take in satisfaction $10,000, which is within $500 of the rebate proposed I submit this to the company through you, trusting that, by your advice, they will feel it to their interest to accept."

On this letter is the following endorsement: "After consultation with the president, am compelled to decline the proposition. The offer made on the part of the company must be adhered to. O. H. P." If there was an answer, it is not exhibited.

On January 26, 1879, Laurie again writes, referring to Palmer's letter of the 22d (Nov.), and requesting an answer to his proposition for a payment of $10,000.

Palmer again declines, by letter of January 29, 1879, and states that he has made the best proposition that it is in his power to make. This letter was directed to Laurie, at Chicago.

On February 3, 1879, Laurie answers, as follows: "Your favor of January 29th was received by me, in Chicago, on the 1st inst. I returned to St. Louis to-day, and will say, in reply, for the purpose of relieving myself and the parties here interested from any further care or anxiety in the matter, I am willing to accept your proposition for settlement of Jeffries' case, provided my understanding thereof is correct. Your last letter refers to a letter of October 22d, as making the most favorable proposition, to-wit: a rebate of $5,000. I find no letter of such a date, but one of Nov. 22d, in which you state that you are willing to settle the claim less a rebate of $5,000. It is to this letter I presume you refer. If such is the case, I am willing to accept, in satisfaction of the claim, the amount of the judgment, with interest thereon to that date, Nov. 22d, 1878, less a rebate of $5,000;" and further says: "If correct, advise me at once and we will close this wearisome matter."

Palmer replies under date of February 6th, 1879, giving amount and date of judgment, the interest to Nov. 22, 1878, deducting $5,000, and states the balance to be $9,401.42. Then adds: "This amount will be paid upon a surrender of the policy and satisfaction of the judgment, and stipulation authorizing the clerk to strike the case from the calendar, and a discharge of the claim by Kennedy's administrator. I expect, of course, that the matter will be closed without any unreasonable delay. I inclose you a blank discharge of the claim, to be signed by the administrator. You can send the necessary papers directly to me, or to any correspondent you may have in the city, as you may prefer."

Accordingly, on the 14th of February we find Laurie in Palmer's office, in New York, with the original policy of insurance in his possession, prepared to surrender it, and to stipulate for a dismissal of the case, but without the "discharge of the claim, signed by the administrator."

The administrator lived forty-five miles from St. Louis, two hours' travel by rail, in daily communication with the city by rail, but to get his signature to the discharge of the claim, was too arduous and too hazardous an undertaking. Crews was in St. Louis, but to communicate with him, would have been equally dangerous.

To get possession of the original policy, was comparatively easy. He had but to abstract it from the files of the court. Mr. Selby, the deputy clerk, in his affidavit (Transcript, p. 11) says that he remembers that on one occasion Laurie called for the papers in the case of Jeffries, administrator, vs. Mutual Life Insurance Company of New York, "that Laurie says (referring to Laurie's affidavit) that he stated at the time that his object was to use the policy; that Laurie may have made such a remark, but he didn't recollect it, and if he did use the expression, he only understood hat he merely wished to use the same in the office."

And again (transcript, pp. 32 and 33) Selby says "that the original policy of insurance filed in said cause and upon which said action was founded, has been withdrawn by some one from the files of this office, and, to the best of affiant's recollection and belief, without his knowledge or consent, and so far as he knows, without the knowledge or consent of any one in his office authorized to give such consent; that he did not know that said paper had been withdrawn until after the satisfaction of judgment had been entered; that he remembers Mr. Laurie's having called into his office and requested to see said papers, but did not understand Mr. Laurie to express a wish to withdraw any of said papers from the office, and that to the best of his knowledge and belief, no receipt for said paper and no copy thereof, is now or has ever been left in his office."

No attempt is made to rebut this evidence, and that Laurie surreptitiously abstracted the original policy from the files is beyond a question.

The facts and circumstances all tend to show that Laurie's only purpose was to get possession of the money, and to

this end he was ready to resort to any trick and to practice any deception. Cautiously concealing his movements in St. Louis, communicating only with the attorney in New York, and causing him to believe that he was the trusted friend and attorney of the plaintiff, and that the plaintiff was fully advised as to all he was doing, we submit that this is the only legitimate conclusion. And as to his pretended conversation and oral contract with the dead administrator, there is, in all the record, not a fact or circumstance that tends to corroborate it, and every fact and circumstance in relation to it shows unquestionably that it was simply an afterthought, suggested by the necessities of the occasion. It was not entitled to a moment's consideration in a court of justice.

There was evidence to show that Laurie did, at one time, some years before, speak to Crews about the fee, and Crews said to him that it would have to be allowed by the Probate Court, but that he had no doubt of a liberal allowance. (Crews' affidavits, transcript, pp. 25 and 58.)

Fees to the amount of $400 had been paid and allowed, and heavy expenses had been incurred and allowed and paid; and, one of the cases being lost, the inference is fair that, from the usual course of the profession in such matters, it would be just and proper to await the determination of this case before presenting an account for services. No account had been presented.

From his affidavit and letters we are led to believe that Mr. Palmer had never before met Laurie, and that he was then stating all that had passed between them. In fact, his statement wears an air of candor, and merely exhibits him as a victim of misplaced confidence; but yet, in the light of certain facts that crop out in the record, we are compelled reluctantly to accuse him of disingenuousness. In his first letter to Laurie (exh. No. 1, transcript, p. 37), of date June 12th, 1878, he says: "I think I have heretofore suggested such terms as I thought were fair for the purpose of ending the litigation, and regret that you have not felt at liberty to take the same view."

This certainly indicates some previous communication, and after the motion to cancel the entry of satisfaction had been overruled, pending the motion for rehearing, a paper, in the handwriting of Laurie, was handed to plaintiff's attorneys, as containing the terms on which Laurie proposed to settle. The following is a copy (Transcript, pp. 52 and 53):

C. S. JEFFRIES, Administrator *d. b. n.* of the Estate of Allen A. Kennedy, deceased.

vs.

THE MUTUAL LIFE INSURANCE COMPANY, OF NEW YORK.

Joseph S. Laurie, attorney of record for plaintiff in above case, in account with said administrator,

Dr.

To cash received in compromise of said cause -	$9,401

Cr.

By expenses of two trips to New York City - -	$130
	$9,271.00
By fee (one-half) - - - - - -	$4,635.50
Balance due - - - - - - -	$4,635.50

The following receipt is intended as a receipt in full, recognizing, as decided by the court, the propriety, good faith and authority of said Laurie in working said compromise, hereby ratifying the same and acquitting the defendant insurance company of all further liability and recognizing the above fee, charged by said Laurie as in pursuance of contract, and discharging him from all further liability to said estate.

Received payment.

Administrator de bonis non
of the estate of Allen A. Kennedy, deceased.

From this paper, unique in its impudence, we are informed of two trips to New York city, as made by Laurie.

No mention had been made of it before, either by Laurie or Palmer. Did Palmer know anything of the other trip? An inquiry elicited the following reply. (Transcript, p. 61.)

140 to 146 Broadway,
NEW YORK, February 12th, 1880.

T. W. B. Crews, Esq., 600 Olive street, St. Louis, Mo.:

DEAR SIR—You letter of the 10th received. I have made a statement of the facts in relation to the Jeffries case in the form of an affidavit, which was sent sometime since to our counsel, Mr. Shepley. So long as the matter is pending by which it is sought to compel the company to pay the claim over again, I should not feel at liberty to make any statement in respect to it, except through our counsel. My action in the matter was in the most perfect good faith, and having offered, upon the return of the money paid, to reinstate the case upon the calendar and abide the decision of the Supreme Court, I think everything has been done that can be required by the strictest rules of courtesy and equity.

Yours truly,

O. H. PALMER, solicitor.

Thus Mr. Palmer declines to say whether he had told *the whole truth* in his affidavit, though the assurance had been given by his attorney that he would do so. His reticence is hardly consistent with that "perfect good faith" he professes, and leaves in darkness and doubt as to matters which may or may not be material. Nor is his proposition to reinstate the case on the docket, coupled, as it invariably is, with the condition that plaintiff shall first pay back to defendant the money so paid to Laurie, any better evidence of "good faith." He knew that plaintiff had not received a dollar of that money, nor authorized any one to receive it for him, nor contributed in any way to the deception practiced upon him by Laurie; and to ask, as a condition of reinstating the case, that plaintiff, an administrator, should refund such an amount, or any amount, appears to us "of a piece" with the receipt which Laurie prepared for plaintiff to sign, above quoted, and only equaled by that in affrontery. It is a mockery. Plaintiff had offered to reinstate, but Palmer declined, unless on terms that were wholly inadmis-

sible. At the same time, Palmer admits that he was overreached and deceived by Laurie. Does he require Laurie to refund? Laurie had obtained his money by false pretense—why does he not prosecute him and compel him to disgorge? Plaintiff was powerless, for a prosecution by him would have been a ratification of Laurie's acts, and there was no law or reason why he should voluntarily assume such a responsibility? A very little inquiry would have shown Palmer that Laurie was pecuniarily irresponsible. His correspondents in St. Louis could have enlightened him, had he seen fit to apply to them. The record here leaves no doubt on the subject.

The returns on a number of executions (Transcript pp. 62, 63, 64 and 65) are invariably *nulla bona*, with one exception where a garnishment was successfully run, and then he claimed the exemption from execution that is allowed by law to a head of a family.

The very fact that Laurie should go to the expense of a trip from St. Louis to New York, to exchange papers, where the facilities of business, through the banks, by express, and even defendant's general agency in St. Louis, were so great, should have suggested caution.

Mr. Palmer required the discharge to be signed by the administrator, but he did not require any proof as to the power of the administrator to compromise. As attorney of such a corporation, in the very nature of his business he was brought frequently in contact with administrators, and knew, or he should have known, the laws by which they were governed; that an administrator in Missouri, acting under the laws of Missouri, had no power to compromise a claim due to the estate of which he was in charge without the order of the Probate Court; that under our laws he was but a trustee, and stood in the same relation to the Probate Court in respect to the estate in his charge that an assignee in bankruptcy or a receiver of a national bank does to the Federal Court. That he was guilty of *laches* in that regard is evident, but when he waived the signature of the admin-

istrator to the discharge, and departed from what we assume to be the invariable business custom of all similar institutions, by making the check payable to any party other than the administrator himself, and especially to a stranger whom he would have us to understand he then met for the first time, thus surrendering the last safeguard that was left to him, it is with poor grace he talks of "good faith," and asks plaintiff to relieve him from the consequences of his own folly.

A word more as to Laurie. In his affidavit, he assumes to himself all the skill, and claims to have performed all the labor in the preparation, trials and general management of these insurance cases. If this assumption was true, it would not affect the result of this motion, but it is denied, and the record throughout contradicts him. He claims for himself the prescience of a seer, and pretends to have foretold the decision of a majority of this court with the same certainty that the most of us can now do by looking back to it. After vainly trying to excuse himself for not consulting his client as to his negotiations with defendant, and for his ten months of silence, which would have been maintained indefinitely, if we are to judge from his general conduct, he is forced by self-conviction to say, "the above is no vindication of myself for the apparent delay" (Transcript p. 21). Then he adds, "as soon as I returned to St. Louis and obtained possession of the money from them, I set apart the share belonging to the estate under the contract, and placed it in the hands of a third party, with a written statement of the whole matter, with instructions as to payment. The money is yet there. This written statement was made upon contingency of death" (p. 21).

Our understanding, from what both he and Palmer states, is that he obtained the money in New York, before he returned to St. Louis. He does not inform us in whose hands he placed the share he thus "set apart," nor what assurance we could have of the solvency or honesty of this

trustee. The contingency as to death is equally obscure. Had it been the death of plaintiff, we would have evidence, doubtless, of another contract.

It is not possible to traverse all the positions taken by Laurie, without unnecessarily incumbering this statement. The gist of it is, that Crews had wronged him as to Franklin County cases, and he proposed to get even through the plaintiff, who was Crews' father-in-law.

Now, that this is untrue, we beg attention to the exhibits of Capt. Chas. P. McCune, Clerk of the County Court of Franklin County (transcript pp. 29, 30, 31 and 32), which show what transpired with reference to the bond suits; that in the suit of Steines v. Franklin County, a number of attorneys were engaged; that the county court allowed them $7,500, which was distributed among them; that it also allowed $7,500 which it afterwards refused to pay; that no contract had been made with the court, but that the amount so actually paid was a gratuity; that afterwards, when the Steines suit was lost, and the bond-holders were proceeding against the county for the collection of their bonds, the court entered into a contract with Crews alone for the defence, which contract was fourteen months after the dissolution of the co-partnership of Crews & Laurie.

That Crews had suffered, both in his purse and business, at the hands of Laurie is only too evident from the record; suits and executions against him for money that had been collected by the firm and appropriated, squandered and gambled off by Laurie.

The affidavit of Joseph Maguire, (transcript pp. 71, 72 and 73) tells the whole tale, and refutes with hard facts all the specious pretences of Laurie. It is as follows:

State of Ohio, }
City of Cincinnati. } ss.

This affiant, Joseph Maguire, being duly sworn, on his oath says that, from 1863 until its dissolution in 1880, he was a member of the firm of John A Griffith & Co., doing a mercantile business in the city of Cincinnati, Ohio; that

about the year 1870 Crews & Laurie were the attorneys in St. Louis of said firm; that at first our acquaintance was with said Crews, and while he gave our business his personal attention we had no cause for complaint; that afterwards said Laurie took our business, which was chiefly collections, more particularly into his hands, and, about 1872 and 1873 remittances from our said attorneys were not made to us as they should have been; that about the month of June, 1873, affiant went to St. Louis, met Mr. Laurie, and demanded a settlement; that said Laurie admitted that he had collected and appropriated money belonging to our said firm, and made promises about refunding it, and asked affiant to wait on him, and not to speak to Crews on the subject, as he didn't want Crews to know about the matter; that affiant then called on Crews, who seemed surprised and totally ignorant of the condition of our account with his firm, and of the fact that any money had been collected which had not been remitted, and refused to give us any satisfaction until he could see said Laurie; that said Laurie was not at his office and affiant waited a day or two in St. Louis for said Crews to see him; that finally said Crews reported to affiant that he had met said Laurie on the street, and that Laurie admitted to him that he, Laurie, had collected the money due our firm from A. Gershon, J. C. Zallee and others, but had lost it gambling and was totally unable to replace it. Affiant states that the sums we then knew about having been so collected and not paid over amounted to about $1,141.33.

That said Crews then and there paid affiant, to the best of his recollection, the sum of $141.33 in cash, and executed and delivered to affiant his own individual promissory notes, amounting to $1,000, payable to John A. Griffith & Co.; that said Laurie could not be found at the time and did not sign said notes. That shortly afterwards affiant and said Crews and Laurie met in the store of F. M. Wood, on Olive street, in St. Louis, and said Laurie asked affiant to take his (Laurie's) individual note and to release Crews from liability on account of said money so appropriated by him, and prom-

ised if we would do so that he would assign and turn over to us any fees that would or might be coming to him to secure the same. He admitted that he had collected the money and appropriated the same, and expressed his great regret for his conduct and for the wrong he had inflicted on said Crews thereby, and spoke of his obligations to said Crews for past favors and acts of friendship, and further promised, if permitted to do so, to go and pay us himself and thus protect said Crews.

That affiant refused to release said Crews, and, on the contrary, exacted security for the payment of said notes, and said Crews thereupon placed a note or bond of Franklin County, Mo., for $500 in the hands of said Wood to be as security for the payment aforesaid, and said Laurie promised to assign his interest in certain fees that would be due the firm of Crews and Laurie, but did not at that time do so. That, in fact, while I was in St. Louis at that time, said Laurie kept out of the way and was hard to find.

That subsequently, about May, 1874, affiant, in the meantime having ascertained that Laurie had collected about $105 from one D. S. Thompson, in addition to the amount herebefore mentioned and which he had not accounted for, informed Crews of the fact, and an arrangement was made for a meeting of Crews and Laurie and affiant at the store of F. M. Wood, on Olive street, and after a conversation there, in which Laurie admitted having collected about $100 on the Thompson claim, it was arranged that Laurie and Crews should give us their joint note for a balance of $1,100, which note Laurie drew up and signed, and then Crews signed; and that Laurie should assign to us his interest in a judgment against the Pacific Railroad for $5,000, his interest being $1,250. He afterwards made the assignment, but affiant was informed that the case was lost in the Supreme Court of the United States (the State).

Afterwards, in 1875, affiant ordered suit upon said note, and a judgment was rendered in the United States Circuit

Court at St. Louis against Laurie and Crews, which yet remains unsatisfied.

That Laurie never paid a dollar of the money so taken by him, and we have received only what was paid by Crews. That when Laurie's delinquency was first made known to Crews, he declared his intention to dissolve partnership with Laurie forthwith, but affiant advised and insisted that he should not do so until Laurie assigned the fees above mentioned.

The dates of facts above mentioned are according to my best recollection. JOS. MAGUIRE.

Sworn to before me and subscribed by said Joseph Maguire in my presence, this 6th day of March, 1880.

[SEAL.] CHAS. H. JONES,
Notary Public in and for Hamilton County, Ohio.

Further comment is unnecessary. The satisfaction of these judgments by Crews would have operated as a release of Laurie, a fact which the creditors recognized and appreciated.

The court overruled the motion. In doing so, he gave his reasons, which were taken down in short hand and afterwards corrected. He found that the original plaintiff entered into a specific contract, which he did not think commendable, "whereby these attorneys (there were two) should prosecute this extremely doubtful claim—they to receive a certain portion of the proceeds, with full power to compromise as they should please."

He declined to go into an examination of the authorities, and again stated that here express authority to compromise was given, and as, in his judgment, the claim was very doubtful, the compromise was rightly made.

He said that he had heard the case three times, and in his opinion plaintiff would not have gotten a sixpence before the Supreme Court, and said that so far as wrong considerations were concerned, the attorney making the compromise acted wisely. He held that inasmuch as there was no express statute of the United States as to entering satisfac-

tion, and though it was claimed that, by analogy, he should follow the State statutes; if he did follow that practice, the entry could be made in open court, or in vacation on the margin of the record. But, if on the facts stated, this entry is found to be void, the court would permit the party to appear in open court at that moment merely to cover a technical error.

He further found that the new plaintiff was bound by the original contract, and that if this compromise was declared void, defendant having dismissed its writ of error, was remediless, and this, "by the fault of the original plaintiff, and the contract he chose to enter into." (Transcript pp. 47, 48 and 49.)

The court, in stating the case, at the outset of his opinion, said there had been two jury trials, forgetting, of course, the facts in relation to that matter. There had been three trials, in all, the two first being before the court and the last before a jury.

The learned judge, also, seems to have forgotten the fact that he himself had twice decided this case for plaintiff, and when plaintiff on the third trial gained the case before a jury, he refused to set aside the verdict, and forced defendant to another appeal to the Supreme Court. We respectfully submit that it was not proper for him, in view of these facts, to assume to himself the powers and conclusions of this apellate tribunal, in which plaintiff had not been heard Plaintiff thought differently, and he had a right to his opinion, as well. The defence was purely technical. It is an admitted fact that a married man is a better risk than a single man. Kennedy's wealth and habits made him the target of these insurance agents, and they pursued him with all the wiles of their art until they fastened him in their toils and robbed him of his premium money.

The misrepresentation of which they complained was not his, but that of defendant, by its own agent. The ink was not dry upon the application before this same agent was informed of the mistake he had made, and yet he does not correct it or inform Kennedy of it.

This was a fraud that plaintiff had a right to believe would be rebuked by this court, as it had been three times before by court and jury below.

Plaintiff appends hereto the following:

ASSIGNMENT OF ERRORS.

1. The court erred in refusing to cancel and annul the entry of satisfaction of the judgment.

2. The court erred in finding that there was a contract between the first administrator and the attorneys, Crews & Laurie, authorizing a compromise on any special contract. The evidence on which this finding was based was clearly insufficient, and the finding was against the weight of the evidence.

3. The court erred in finding that the administrator had authority to make such a contract, or to make a compromise without the express sanction and approval of the Probate Court.

4. The court erred in finding that plaintiff was barred by the alleged contract made by the first administrator, and especially as there was no evidence to show that he had any knowledge whatever of such a contract.

5. The court erred in holding that the attorney, Laurie, was authorized to compromise said suit.

If the contract is conceded, the action of both attorneys was necessary.

10. And the court committed error in finding for the wrong party, and refusing a rehearing on the application of plaintiff.

T. W. B. CREWS and
JOHN W. BOOTH,
Attorneys for Plaintiff.

BRIEF, POINTS AND AUTHORITIES.

The motion of plaintiff in error to vacate, annul and expunge the entry of satisfaction of the judgment in his favor against the Mutual Life Insurance Company of New York, was resisted in the Circuit Court upon grounds which, for convenience, we present in numerical order as follows, to-wit:

1st. That C. W. Jeffries, predecessor of plaintiff in error, in the administration of the estate of A. A. Kennedy, deceased, about the year 1872, employed "Crews & Laurie," a firm then composed of T. W. B. Crews and Joseph S. Laurie, attorneys at law, to institute and prosecute in favor of said estate against the Mutual Life Insurance Company of New York, a suit upon the cause of action on which the said judgment was rendered; and that said administrator contracted with said firm of Crews & Laurie that, for their services in such suit, said firm should have the one-half of what might be recovered therein, and have the right to compromise.

2d. That C. W. Jeffries, as administrator of said estate, was authorized to make such contract, and thereby bind the said estate; and his successor, in the administration thereof, by virtue of his general power as administrator without the knowledge, consent or approval of the Probate Court of Franklin County, Missouri, then having jurisdiction of the administration of the said estate, and without such successor being informed of, or consenting to, such contract.

3d. That such contract, if so made, by said C. W. Jeffries, as administrator of said estate, authorized said Laurie to compromse said judgment and cause of action, after the death of said C. W. Jeffries, and after the dissolution of said copartnership of Crews & Laurie, without the knowledge or consent of the successor of said C. W. Jeffries in

the administration of said estate, and without such successor being informed of the contract, and without the consent or knowledge of Crews, the former partner of Laurie.

4th. That an attorney of record in an action, may, by virtue of his authority as such attorney, bind his client by a compromise of his cause of action.

In the controversy upon each of these grounds of resistence to the granting of the relief asked by the motion in this case, the plaintiff in error, in the Circuit Court, held, and here holds, the negative.

In order to sustain the objections, and refuse the relief asked, it was upon the motion and the evidence necessary that the Circuit Court should hold that the three first of said objections collectively, or the fourth of itself, barred the relief sought by the motion.

The Circuit Court declined to pass upon the fourth of said grounds of objection; and holding that the compromise was in this case authorized by contract, it thereby found against plaintiff in error upon the three first of said grounds collectively, and overruled the motion. In so finding and ruling, plaintiff in error maintains that the Circuit Court erred in each of the following particulars, to-wit:

1st. In finding, upon the evidence, that C. W. Jeffries, administrator of the estate of Kennedy, contracted with Crews & Laurie that, for their services in the action against the Mutual Life Insurance Company, they should have one-half of what might be recovered, and a right to compromise the action.

2d. In holding that C. W. Jeffries, as administrator of the estate of said Kennedy, was authorized, by virtue of his general power as such administrator, without the knowledge, consent or approval of the Probate Court of Franklin County, Missouri, (said court then having jurisdiction of said estate and of the administration thereof), to bind said

estate, and his successor in the administration thereof, by a contract with Crews & Laurie that, for their services in the suit of the estate against said insurance company, they should have the one-half of what should be recovered therein, and a right to compromise the suit.

3d. In holding that, if C. W. Jeffries, as administrator of said estate, contracted with Crews & Laurie to prosecute the suit of the said estate against said insurance company; and that, for their services in such suit, they should have the one-half of what should be recovered therein, and a right to compromise such suit; such contract (though never authorized or sanctioned by the Probate Court having jurisdiction of the administration of said estate, and never communicated to the successor of said C. W. Jeffries in the said administration, and never assented to by such successor) authorized the said Laurie, after the death of said C. W. Jeffries, and after the dissolution of the copartnership between said Crews & Laurie, to compromise the suit without the knowledge or consent of the then administrator, (who is the plaintiff in error), and without the sanction or approval of said Probate Court, and without the knowledge or consent of Crews, the former partner.

In the first of said particulars the court erred in this: that its finding was against the weight of the evidence.

As to this point plaintiff in error says:

There was no evidence tending to show the making of any such contract as the court found to be the contract between Crews & Laurie of the one part, and Charles W. Jeffries, as administrator of the estate of Allan A. Kennedy, of the other part, except the affidavit of Joseph S. Laurie of a conversation which he says took place between himself and the said Charles W. Jeffries, which affidavit is, as to the said conversation, wholly uncorroborated. And the affidavits in the cause and the other papers and exhibits therein, including the affidavits of said Laurie himself, showed that the affidavits of Laurie to the said pretended conversation was not entitled to any credit.

The following, among other circumstances in evidence in the case, went to discredit the said affiant, Joseph S. Laurie, to-wit:

1st. Said Laurie did not pretend to have been present at the making of any such contract with the said C. W. Jeffries. The whole of his testimony on this point being as follows, to-wit:

"The opinions of affiant as aforesaid, were duly reported to Crews, and it was agreed between Crews and affiant that we would prosecute the cases, even to the Supreme Court, upon a contingent fee of one-half the amount recovered in each case, the attorneys to have authority to compromise either case at whatever terms, and in whatever manner it should appear to the attorneys to be in the interest of the estate. Crews replied that this was all right, and he would make the agreement with his brother-in-law, the administrator. Sometime afterwards—affiant cannot state exactly how long—Chas. W. Jeffries, the administrator, who was a resident of Franklin county, and in the habit of visiting the office of Crews & Laurie, and with whom affiant was well acquainted, visited the office of Crews & Laurie, and in the course of the conversation he referred to these cases, asking me about them, their condition, and my opinion in reference thereto, and in reply informed him in full, stating the desperate character of the Economical case, and speaking more hopefully of the Mutual Life case, stating the different legal propositions involved therein. He incited me (including Crews, who was not present,) to great exertion, remarking that if we did not gain the cases, of course we would receive no fees. I replied that I understood the matter, and, according to my understanding from Crews, Crews and myself, as the attorneys, were to receive a contingent fee of one-half the amount received in each case, with privilege of compromising such cases in whatever manner the interests of said estate, in the opinion of counsel, seemed to require. Said Jeffries acquiesced, and affirmed the statement as to the contract. Some other general re-

marks were made about courses which the cases would pursue, and the time necessary to reach a final adjudication.

The aforesaid statement of the fee, and query in regard thereto, to Jeffries by Laurie, were purposely made in order to obtain real information, said Crews having on former occasions deceived affiant in regard to Franklin County case." (14 and 15.)

It is to be noticed that Laurie does not pretend that Crews had ever told him prior to this conversation with C. W. Jeffries, that he had in fact made such an agreement with him in respect to the cases; on the contrary, he says that his "statement and query to Jeffries in regard to the fee was purposely made in order to obtain real information." That is to say, in attempting to account for having talked with C. W. Jeffries about the fee, and to explain how it was that he himself in that conversation stated to Jeffries just what he now maintains was the contract, he discredits himself by showing that he, without any occasion so to do, stated that he had information from Crews, which he did not in fact have.

It is true that he says he had a purpose in doing this, but why would not a plain direct question as to what, if any, agreement had been made as to the fee, have answered the purpose?

The inference is strong, that one who would deliberately resort to a false representation, as the mere form of making an inquiry, would not be nice about confining himself to the truth, when a falsehood would be in line with his attempts to appropriate to his own use the half of $9,401.42.

2d. So far as appears from any evidence in the cause except Laurie's own affidavit, his first statement of any such contract and his first mention of any such conversation with C. W. Jeffries are found in his affidavit filed in this cause, seven years after C. W. Jeffries' death.

3d. Laurie does not give even approximately the time when this pretended conversation occurred, nor give the

slightest clue for the investigation of the fact; nor offer any explanation of how it chanced that, though his suspicions were so soon aroused, he failed to make any effort to secure any written statement of the contract from C. W. Jeffries, nor how it happened that for so many years after the death of C. W. Jeffries, he, notwithstanding all his suspicions of Crews, utterly failed to give the present administrator of the estate any notice of the interest which he claimed, by that pretended contract, to have in whatever might be recovered in the suit, or in any manner seek to secure from him any ratification or recognition of such contract.

4th. By Laurie's own affidavit it is evident that such a contract if it existed at all, was originally made between Crews and Dr. C. W. Jeffries, administrator of Kennedy.

Crews denies that there was such a contract, and swears that he was never authorized by C. W. Jeffries nor by the present administrator to compromise the cases nor either of them, and that the subject of compromise was never mentioned between him and them, or either of them, and that he never promised Laurie anything whatever in respect thereto; that one time some years ago Laurie did speak to Crews about the fee, and that Crews told him that it would have to be allowed by the Probate Court, but that he had no doubt of a liberal allowance. That Dr. C. W. Jeffries died in January 1873, after a long sickness, and before the first trial of the cause, and that if he, C. W. Jeffries, ever had such a conversation with Laurie as is mentioned in Laurie's affidavit, he, Crews never before heard of it. And that he believed that C. W. Jeffries was too well advised of his duty in respect to such matters, and too prudent to have thus assumed a personal responsibility of such consequence, even for a consideration, and that in this case there would have been none at all adequate. (25.)

5th. Laurie strengthens the presumptions which arise from his failure to mention to the present administrator the pretended contract under which he claims a half of the proceeds of the suit, by swearing that plaintiff in error several

times conversed with him about the case and its progress, recognizing Laurie as of counsel in the case. (22.)

6th. Laurie's proceedings in the compromise were by him carefully concealed from Crews, his associate counsel, and from plaintiff in error, the administrator of Kennedy.

The case went to the Supreme Court by a writ of error, sued out by the defendant, and returnable to the October term, 1878, but "the condition of the docket was such that the case would not, as client was informed, be reached for four years from return date. (Laurie's affidavit, p. 19.)

This afforded an opportunity for Laurie to move while Crews and the administrator would naturally be resting quietly under the supposition that the case was lying by until the business of the court would admit of its being taken up in its order. Accordingly Laurie (without communicating with either Crews or the administrator the alarm which grew so strong upon him after the case had been tried successfully three times, and gone twice to the Supreme Court), by correspondence with O. H. Palmer, solicitor and chief counsel for the insurance company in New York city, began his negotiations for a compromise on May 16th, 1878. (36.)

This correspondence was kept up until February 6th, 1879—nine months. (37.)

By letters between these parties (Laurie and the solicitor of the insurance company), the terms or the compromise were agreed upon. But no intimation of the correspondence was given by Laurie, either to his associate counsel in the case or to his client during all this time.

By the last letter in this correspendence, dated February 6th, 1879, the solicitor of the insurance company said to Laurie: "The amount will be paid upon the surrender of the policy and satisfaction of the judgment, and stipulation authorizing the clerk to strike the case from the calendar, and a discharge of the claim by Kennedy's administrator. I expect, of course, that the matter will be closed without any unreasonable delay.

"I enclose you a blank discharge of the claim to be signed by the administrator.

"You can send the necessary papers directly to me or to any correspondent you may have in the city, as you prefer." (41.)

Laurie did not obtain or attempt to obtain the signature of the administrator to the discharge. He put himself in position to comply with the demand of the letter as to the surrender of the policy, by abstracting the policy itself from the files of the court in which the suit was determined (19), without leave of court or the knowledge of the clerk: and as an attempt to get the money by the transmission of the papers to New York, the failure to secure the signature of the administrator to the discharge of the claim could not well be explained, he took the policy which he had so procured and himself went to New York city, in order to carry the compromise through without the co-operation of the administrator.

On the 14th of February, 1879, he called upon the solicitor of the company in New York City at the office of the company, and surrendered to him the policy and signed the vouchers prepared by said solicitor, Mr. Palmer. Palmer then delivered to him a check of the insurance company for $9,401.42, payable to the order of "*Charles* S. Jeffries, administrator of Allan A. Kennedy," and Laurie, then, by assuring Palmer that Mr. Jeffries, the plaintiff, was fully cognizant of all the facts, and that he was acting with the full consent of Mr. Jeffries, and that it was necessary to use the money in New York, without the delay of sending forward the check for the endorsement of Mr. Jeffries, induced Palmer to add in the check, after the words "pay to the order of Charles S. Jeffries, administrator of Allan A. Kennedy," the words "or Joseph S. Laurie, attorney." (35 and 36.) Then Laurie drew the money on the check, and deposited it in New York, to his own credit. (20.)

Laurie then allowed the matter to stand, without paying or offering to pay any part of the money so received by him

to the administrator, or giving to him or any one for him, any notice of any of these proceedings. And the facts at last were brought to the notice of the administrator, by Crews writing to the clerk of the Supreme Court in December, 1879, for information as to when the case would likely be reached; and receiving some information, as to the dismissal on a compromise, which led him to hunt up Laurie and inquire of him. (7 and 27.)

Upon such inquiry being made, Laurie told Crews that he had settled the case, and being asked by Crews by what authority he had done so, he made no pretense of having been authorized to do so by contract, but said that as attorney he had a right to settle it. Being told by Crews that the compromise would not be ratified, he replied that he had a decision of the Supreme Court of the United States on the subject, giving him the power to compromise. (27.)

The administrator first learned of the compromise by being informed by Crews on the 15th of December, 1879, and the administrator himself, and also by Crews, promptly notified the company that the compromise was made without authority, and would not be ratified. (6 and 8.)

On December 15, 1879, two days after Laurie became so advised that Crews had notice of his proceedings, he made the entry here asked to be expunged, and did this in the same skulking manner which is characteristic of all his proceedings with respect to the compromise.

T. L. Crawford, the deputy clerk, who attested the entry, makes affidavit that when this entry was made, Laurie requested Mr. Selby and himself "to say nothing about the entry of satisfaction at present, or words to that effect," as near as he can remember. (9.)

While Selby says Laurie stated that the Jeffries case had been settled and that he wanted to enter satisfaction, "Laurie further stated that he desired this matter to be kept from the press for a few days, as he expected in the meatime to have a settlement with Crews."

6th. Laurie, in his affidavits, has two purposes in view: one, to make it appear that he was the sole attorney for plaintiff in the case in which he made the pretended compromise, and make it appear that this was simply an attempt on the part of Crews to get a fee that belonged to Laurie, and that he concealed his proceedings from his client through fear that his client would aid Crews in so doing; and the other, to make it appear that, with a view to a settlement between himself and Crews, it was proper for him to conceal from Crews and his client the fact of this settlement until matters generally between Crews and himself should become ripe for a settlement. Accordingly, his testimony varies, as one or the other of these objects is most prominent for the time. When he is thinking of the first he says that, Crews' testimony being necessary in the case, he agreed to testify, and that the fee, including the management and rights under contract with the original administrator should go to Laurie. (16 and 17.) That Crews' statement that he coutinued to act as attorney in the case is untrue. (22.) And that Crews would have settled the case on the same basis had he been the attorney. (44.)

But when he has the second object in his mind, he says:

"The statement that upon the dissolution of the co-partnership Crews allowed affiant to continue in certain cases so as to give affiant an opportunity of working and paying out certain moneys which said affiant had improperly used, and for which said Crews was bound. This is false, and, as a matter of law, evidently so, as affiant was still a co-partner in all cases then on hand, and was by law entitled to one-half the fees realized therefrom, both here and in Franklin County———." (42.)

And speaking of the Franklin County bond suit, and Crews' new contract relating thereto, and of the interest and connection of himself with Crews in that and other Franklin County cases, and in connection with said partnernership, he says:

"I had informtion that the fees under the new contract

would amount about $20,000, and I intended, as soon as the matter came to a focus, to assert my rights in a legal manner, claiming one-half the amount realized by him under this contract and other Franklin County cases, and allowing him a credit of one-half the fee I should receive in the Insurance case."

Thus we see that the dim hope of being able to divide a $20,000 fee in another case with Crews, corrected his vision so that he still saw that he and Crews were partners, entitled to an equal division of the fee in the Insurance case.

7th. Laurie's pretence that Crews absolutely withdrew from the case, and left it solely to him, is not only contradicted by Crews, but it is contradicted by the present administrator's affidavit that he only knew Crews as the attorney, and did not even know that Laurie was an attorney in the case. And it is more strongly contradicted by the circumstance that, by means of Crews continuing to look after the case, the compromise, so long concealed from his client by Laurie, was eventually discovered.

8th. The positive testimony of Crews, that he never made with C W. Jeffries such a contract as Laurie avers said Jeffries admitted to him, shows that no such fact existed as was attempted to be established by the evidence of the admission; and this is strong evidence that the evidence of Laurie as to the conversation with C. W. Jeffries is a mere fiction.

9th. Laurie's own affidavits showing his reference made to Palmer to the case of Holker v. Parker, 7th Cranch, as giving him power to compromise, shows that he had, even before the making of the compromise, looked for authority to make the compromise in the books, and affords evidence that his pretence of direct authority from C. W. Jeffries is false, and an invention made since the making of the compromise.

10th. Laurie's statement that as soon as he returned to St. Louis and obtained possession of the money, he set apart

the share belonging to the estate under the contract and placed it in the hands of a third party, with a written statement of the whole matter, with instructions as to payment, and that the money is there yet, if true imports an inexcusable and wrongful disposition by him of moneys of the estate; for what pretence of right could he have for putting the moneys of the estate into the hands of a depositary selected by himself, and leaving it there indefinitely at the risk of the estate; but, worse than this, his want of candidly stating with whom such deposit was made throws such a cloud upon the whole statement as to render it unworthy of credit.

11th. Laurie is contradicted by the affidavit of Mr. Palmer as to the representations which he made to Palmer to induce Palmer to change the check so that Laurie could himself draw the money on it (35, 36 and 20), and by Col. Thoroughman as to his offer of any money to Thoroughman for the estate (22, 23 and 33, 34), and by Mr. Selby as to his pretense that, at the time he got the papers in the insurance case and took from them the policy of insurance, he told Selby that he wanted to use the policy (19 and 11), and by Mr. C. S. Jeffries, as to his pretence that Mr. Jeffries conversed often with him about the case and recognized him as of counsel in it (22 and 6), and by Mr. Crews as to the matter hereinafter stated as to how Dr. C. W. Jeffries came to be appointed as administrator of the estate of Kennedy, and the arrangements as to the fee in the two insurance cases, and as to Crews absolutely withdrawing from the Mutual Life case, and leaving that case solely to Laurie, and consenting that the fee and management should go to him, and in divers other particulars too numerous to admit of being here specified. (See affidavits of Crews, 7 and 24 and 57, and of Laurie, 13 and 41.)

12th. Laurie exposes himself in his true colors in the beginning of his affidavit (13), in saying: "Affiant states that on the 19th day of August, 1871, one Allan A. Kennedy, a Canadian, but for some time previous living in

Franklin County, died in the town of Pacific, in Franklin County, reputed to be a wealthy man, and one whose estate would furnish much litigation and revenue to attorneys; therefore said Crews proposed to affiant that he, Crews (who resided in Franklin County), in order to obtain control of said estate, would secure the appointment of his brother-in-law, C. W. Jeffries, of Franklin County, as administrator of said estate, which was accordingly done; and said Crews in due time obtained possession of two policies of life insurance issued on the life of said Kennedy, one by the Economical Life Insurance Company for $5,000, the other by the Mutual Life Insurance Company for $10,000."

Mr. Crews denies this, and shows that the wife and nephews of Kennedy came to Missouri to look after his estate, and consulted James Halligan, an attorney of Franklin County, and that by his (Halligan's) advice to them, C. W. Jeffries was appointed administrator, and that Halligan was the attorney of the estate in Franklin County up to the time of his death in 1879. (24 and 25.)

But what Mr. Laurie says about it is alike discreditable to him, whether it be true or false. Such a method of working up business, such plotting by strangers to secure the control of the estate of a dead man, with an eye to the litigation and revenue it would furnish to attorneys, is so ghoulish, that it puts the lawyer who avows it of himself, on as contemptible a footing as he could well get. Such practice as Laurie so avows unmistakably brands an attorney as a disgrace to his profession. Whether it be a fact, or he falsely affirms it, with the view of smirching the reputation of Mr. Crews, we have in either case the like evidence of his (Laurie's) lack of that moral character, which is the only satisfactory ground of faith in human testimony.

Such is the character of the testimony upon which the finding of the Circuit Court, as to the fact of such contract being made, is based; and we think, that upon the face of the affidavits and exhibits in the case such finding, was in utter disregard of all known methods of judging of the credibility of testimony, and clearly wrong.

The second and third of the said errors, which plaintiff maintains were committed by the Circuit Court, involve no disputed facts, but simply the question of law, whether C. W. Jeffries, as administrator of the estate of Kennedy, in fact made such a contract, as Laurie in his affidavit pretends; such contract was within the power of such administrator to make without the sanction or approval of the Probate Court so as to bind the estate, and his (Jeffries') successor in the administration thereof, and authorize Laurie alone after the death of the original administrator, and after the dissolution of the partnership, upon which the power was originally so attempted to be conferred, to compromise the action, acting for himself alone, and without the knowledge or consent of the then administrator, and without the then administrator having ever been notified or informed of such pretended contract.

The Circuit Court held that such a contract so made by the first administrator was binding upon the estate and the subsequent administrator thereof, and might be so executed by Laurie alone.

In its opinion, however, that court only said as to all the questions of law which are involved in the question, "But it is said again that the original plaintiff died pending the proceeding, and a revivorship *de bonis non;* that this new plaintiff did not enter into any contract or ratify the old one; and that therefore the power given to the attorney to compromise could not be considered as applicable to matters as they stood on final hearing. Now, I suppose when the final contract is made by a party, he who succeeds in interest to him, is bound by the original contract."

The proposition of law so announced by the court is inapplicable in this case, for the reason that it fails to take into consideration the distinction between persons acting in their own right, and their successors by descent or purchase; and those who by operation of law, become successively charged with the custody and care of property, as to which they have no right of ownership, but only powers conferred

upon them by law, as is the case with administrators and assignees in bankruptcy, and taking this intimation of the court as embodying the only legal proposition upon which the binding force of said pretended contract depended, it is further inadequate to govern the case, because it entirely fails to meet the question of the power of the first administrator, to bind the estate by such a contract.

The administration of the estate of Kennedy is and has always been, strictly and exclusively under the laws of the State of Missouri. C. W. Jeffries was appointed by the Probate Court of Franklin County, Missouri, and as administrator of the estate he had no interest in the property or assets of the estate, and no power to give to another any contingent interest in the property or assets of the estate.

The statutes of Missouri in force during his administration of Kennedy's estate, to which his administration was subject, and which were the rule and limitation as to his powers to bind the estate, only authorized him to dispose of the personal property of the estate, by sale, after appraisement as provided by statute, (Wag. Stat., Vol. 1, p. 88, Sec. 38; and p. 39, Sec. 44), and only authorized him to give receipts and discharges for money received by him for the estate (Wag. Stat., Vol. 1, p. 90, Sec. 59), and empowered to assign notes and bonds of the estate to creditors, legatees and distributees in discharge of an amount of their claims equal to the amount of such bond or note, (Wag. Stat., Vol. 1, p. 89, Sec. 40), and to prosecute and defend in behalf of the estate such suits as might be brought against it, or such as it might be necessary to bring in its behalf, (Wag. Stat., Vol. 1, p. 87, Sec. 26), and put all questions of attorneys' fees, for services rendered the estate, under the control of the Probate Court, by a provision that such as were reasonable should be allowed by the Probate Court, (Wag. Stat., Vol. 1, p. 108, Sec. 9), and provided for sale at public auction, under order of the Probate Court, after publication of notice, of all such debts due the estate as the administrator could not collect (Wag. Stat., Vol. 1, p. 110, Secs.

18 and 19).

And so limited are the powers of an administrator in the State of Missouri, that, even where the decedent leaves stock, or other personal property, in a condition in which expenditures are necessary to preserve it from loss or destruction, the statute only authorizes the administrator, without an order of the court, to make such expenditures as may be necessary for the preservation of the property, up to the first term of the Probate Court, (Wag. Stat., Vol. 1, p. 90, Sec. 52), and, instead of giving to the administrator a general discretion to do what the interest of the estate seems to require in the collection of debts, this power is in Missouri put under the control of the court, (Wag. Stat., Vol. 1, p. 90, Sec. 58). (See appendix.)

The question of the powers of an administrator under the administration law of Missouri, has several times been before the Supreme Court of the State, and that court has uniformly held that the common law rule on this subject does not prevail in the State of Missouri, and that in that State an administrator is the creature of the statute, and has no power except such as the statute confers upon him.

And on this ground it is held that an administrator can not even make a transfer of a note or bond of the estate, except to a creditor, legatee or distributee, in discharge of their claims against the estate.

See Chandler v. Stevenson, 68th Mo., p. 450.
Stagg v. Linnenfelser, 59th Mo., p. 326.
Stagg v. Green, 47th Mo., p. 500.

Not only is it the law in Missouri, that administrators are mere creatures of the statute, with no other powers than the statute directly gives them, but the Probate Courts of that State are held to be courts of limited statutory powers, regulated strictly by the statute.

See Butler v. Lawson, 72 Mo., 227, (second paragraph of the opinion.)

So closely have these views of the administration statutes

of that State been adhered to by the courts, that in the revision of the general statutes of the State of 1879, it was thought necessary to insert in the general administration law a clause giving the probate courts the power to authorize administrators to make compromises, where by reason of the inability of the debtor to pay in full, the whole debt could not be collected.

See Revised Statutes of Missouri of 1879, Sec. 242, page 37, Vol. 1. (See appendix.)

The question is the same in principle as would be that of an assignee under the late bankruptcy law, to, by contract with an attorney for the prosecution of a claim in behalf of the estate, give such attorney a half interest in the claim, and a right to compromise it on such terms as he should think fit.

Such a contract, if of any binding force in law against the estate, at once takes that claim out of the power of the administrator and beyond the control of the Probate Court, and deprives the estate of the benefit of the laws which were enacted with a view of controlling its management and preventing the administrator from squandering, misappropriating or otherwise mismanaging the property and assets of the decedent.

For these reasons, even if C. W. Jeffries ever made any such a contract as is alleged in the affidavit of Laurie, that contract was, as to the agreement to give the one-half of what might be recovered in the suit and as to the giving of power to compromise the suit, beyond his power as administrator, and it was therefore of no binding force against the estate, and consequently of no binding force against his successor in the administration of the estate.

Courts have never looked with favor upon contracts by which attorneys agree to prosecute a suit for an interest in whatever may be recovered therein, and at common law such a contract was champertous and void; but if we concede that as between two persons, each acting for himself, such contract would be supported in America, still this will

not sustain the contract claimed to have been made, for the reason that the proceeds of the action were the property and assets, not of the administrator, but of the estate, and he had no authority so to prospectively dispose of them.

An administrator, being authorized to prosecute and defend in behalf of the estate in suits at law, and the allowance for attorneys' fees for legal services rendered in behalf of the estate in such suits, being made subject to the discretion of the Probate Court, we hold that, as a matter of public law, every one who renders legal services for such an administrator, at least under contract or engagement made in the State of Missouri, must, as a matter of law, be held to have entered into such engagement or contract, with notice of and subject to the statute, making fees for such services, subject to such discretion of the Probate Court, and therefore that such fees can only be recovered as that court may allow as costs of administration. If this be correct, then even a contract by the administrator to pay a specific sum for such services, would not control as to the amount of the fee, and notwithstanding such contract, no more could be recovered than the Probate Court should deem a reasonable fee.

It is evident that as the Probate Court is for such services to allow only such fees as it may deem reasonable, the administrator cannot, by contract, bind the estate for the payment of any specific and certain sum, independent of what the court may deem reasonable. It therefore follows, either that the administrator cannot make any valid contract, for the payment of a fixed and certain fee in such case, or else that in the case of a contract made by an administrator for such services, he is to be considered as individually bound to the attorney for the amount of the fee which he may stipulate for the payment of, and that in case the Probate Court in passing on his accounts does not deem the fee so fixed a reasonable one, and allows less, he must individually lose the difference between the fee agreed to be paid, and the fee allowed by the court.

If we concede then that such a contract as is claimed by Laurie in his affidavit was in fact made by C. W. Jeffries, that contract could not have authorized the estate to be put to any other charge than the payment of a reasonable attorneys' fee, the services actually rendered for the estate by the attorney or attorneys; and whatever remedy such attorney or attorneys may have been entitled to against C. W. Jeffries, for any difference between the amount with which the estate might have been legally so charged and the compensation which C. W. Jeffries so agreed to give, certainly as against his successor in the administration of the estate there would have been no right to more than a reasonable compensation, to be determined by the Probate Court, and therefore such a contract could neither authorize the compromise nor confer upon the attorneys any interest in the estate's cause of action against the insurance company.

If C. W. Jeffries had himself, as administrator, had the power to bind the estate by a compromise, and had power to also authorize an attorney to bind the estate by a compromise, he could no more have given an attorney power to compromise the action after his death, than he could have conferred upon an attorney the right to prosecute the action after his death without authority from his successor to prosecute the same.

Even if the first administrator had had full power himself to have compromised the suit of the estate, and to have delegated this power to his attorneys in the suit, yet, as his death unquestionably terminated his own powers, it must of course have arrested at once and forever the execution of all powers delegated by him; and, as there is no pretence of the present administrator having authorized any compromise, the compromise made by Laurie cannot be supported by any contract made with the deceased administrator.

And, again, even if the first administrator had had the power himself to compromise the suit, and to delegate that power to his attorneys therein, and actually did so, still

there is no pretence that he conferred any such power to compromise on Crews and Laurie severally: on the contrary, the only pretence is that he conferred the power on the firm of "Crews & Laurie;" therefore, if with the power the first administrator had had authority to grant with the power an interest in the particular asset of the estate of Kennedy which was the subject of the suit; so as to have supported the power, even after the death of the first administrator, and given them authority after his death to execute the power, without the consent, and even against the will, of the successor in the administration of the estate; yet the compromise here in question would be void, because made by Laurie alone in his individual capacity, after the dissolution of the firm of Crews & Laurie, and without the knowledge or consent of Crews. And it is beyond question, both as a matter of fact and as a matter of law, that no power to make a compromise for the estate was ever conferred upon him individually.

While that partnership existed the act of one partner in behalf of the firm was the act of the firm, and for all such acts the members of the firm were both responsible to the estate; but the estate has no remedy against Crews for acts done afterwards by Laurie in his own name and behalf.

The Circuit Court declined to pass upon the question of whether or not an attorney, merely by virtue of his general power as attorney, is authorized to compromise his client's cause of action, for the prosecution or defense of which he is employed.

Yet the court appears to admit that, unless Laurie had some other authority than such as pertained to his mere employment as attorney to prosecute the case, his proceedings in the compromise which he pretended to make were without authority, and null and void.

Yet, as this pretence of a general authority in the attorney to bind his client by a compromise, merely by and under his general power as attorney, was one of the grounds upon which the motion to cancel and expunge the entry was

resisted, plaintiff in error cites the following authorities, which we think show that, according to an overwhelming weight of authority, the rule in not only the State of Missouri, but through the United States generally, is, that an attorney has no power to bind his client by a compromise.

In the case of Quarles & Thompson v. Porter, 12th Mo. 76, decided in 1848, Q. & T. having obtained judgment against Pearce, caused Porter to be summoned as garnishee on execution on the judgment, to answer as to his indebtedness to Pearce. He answered that, at the time of the service of the garnishment, he was indebted to Pearce in the sum of $800, on a note payable December 25th, 1844. That after service of the garnishment it was agreed between Pearce and Joseph Combs, acting for and in behalf of plaintiff as attorney, that Porter should pay Quarles & Thompson $100, and in consideration thereof should be released from the garnishment, and not required to answer the same. That thereupon Combs executed to Porter a written release and discharge from the garnishment.

And that afterwards Porter paid Pearce the full amount of the balance of the note.

On appeal to the Supreme Court of Missouri, that court held "that the general power of an attorney did not extend to the making of a compromise, and that, without special authority to make the compromise and give the release, the same were void."

In its opinion the court used the following language:

"Attorneys at law, being entrusted with the management of their clients' causes, have necessarily extensive powers confided to them in the prosecution of causes to judgment, and, after judgment, have a general direction and control of the judgment for the purpose of making the debt; but beyond this they cannot legitimately go; they have no right to compromise or compound ———."

In the case of Davidson v. Rozier, 23d Mo., 387, decided in 1856, the suit was for moneys had and received. The defence was a compromise and satisfaction, and this was

attempted to be sustained by proof that in a former action between the same parties on the same cause of action, the matter had been compromised between agents of the defendant and the attorney of the plaintiff, and that the terms of the compromise had been performed by the defendant. To the defendant's said claim of compromise, the plaintiff set up that the attorney had no authority for him to make the compromise. The Supreme Court again held that the authority of an attorney in a suit did not empower him to make a compromise for his client without special authority so to do being given.

On this point the court said: "An attorney is authorized to do those things only which pertain to the conduct of the suit."

He has a right to enter into a reference, but no right to make a compromise.

In the case of Walden v. Bolton, 55th Mo., p. 455, decided in 1874, this question was again the controlling question in the case.

The proceeding was by injunction to restrain a sale of land on execution, and the ground on which it was sought to be restrained, was that the execution was upon a judgment which had been recovered in a proceeding to enforce a vendor's lien upon certain land, and that the judgment therein had been rendered upon a compromise between defendant in that suit and plaintiff's attorney therein, by which in consideration of an agreement by plaintiff's said attorney, that plaintiff would look exclusively to the land for satisfaction of the judgment, the defendant allowed the judgment to be taken, waiving a good defence to the action, and that the land against which the judgment was rendered had been sold under the same. The defendant in this suit denied the right of his attorney in the suit to foreclose the vendor's lien, to make such compromise.

The Supreme Court of Missouri again held that such a compromise made by an attorney without special authority, or without the consent or ratification of the client, was void

for want of authority in the attorney. The court again laid down the rule of law in almost the same language as in the cases above cited, saying: "The general rule is that an attorney cannot by virtue of his general authority or employment, to conduct the suit, bind his client by bargains, or contracts to compromise or settle the cause of action."

In the case of Spears v. Lederberger, administrator of Sargeant, 56 Mo., p. 465, decided in 1874, Spears had obtained in the Probate Court an allowance against the estate of Sargeant. Moody, attorney for Spears, accepted $200 as full payment, and gave a receipt to that effect. The proceeding was to compel full payment of the claim. The Supreme court in passing upon the question of the extent of the power of Moody as attorney to bind his client, Sargeant, by such a compromise, or rather by any compromise, said: "And the law is too well settled to admit of discussion, that an attorney has no authority arising from his employment in that capacity to compromise the claim of his client."

In North Mo. R. R. v. Stephens, 36 Mo. p. 150, decided in 1865, and Grumley v. Webb, 48 Mo. p. 562, decided in 1871, and in Semple, Birge & Co. v. Atkinson, 64 Mo. p. 504, decided in , and in Black v. Rogers, 75 Mo. p. 441, decided in 1883, the cases went off, either on the ground that the compromise had the approval, or was made with such knowledge of the facts on the part of the client as sufficiently indicated his consent, or else that the arrangement, had been long acquiesced in, and was not in strictness a compromise, but rather such an arrangement for the determination of the cause as was within the province of counsel to make; yet in each case the Supreme Court recognize and refer to the rule as laid down in the cases above cited, so that so far as the Missouri decisions are concerned not the slightest conflict or inconsistency is to be found.

In the State of New York, where the compromise was consummated, and the defendant company had its corporate organization and principal office, the law is as clear, and

longer settled, and to the same effect as in the State of Missouri.

Shaw v. Kidder, 2d How. Prac., 244.
Lewis v. Woodruff, 15 How. Prac., 539.
Quinn v. Lloyd, 5 Abbott's Prac., (N. S.) 281.
Barrett v. Third Av. R. R. Co., 45 N. Y., 628.
Mandeville v. Reynolds, 68 N. Y., 528.

The Supreme Court of the United States, recognizes and was among the first courts in the country, which held that the authority of an attorney did not empower him to make a compromise of his client's case.

Holker v. Parker, 7 Cranch, 452.

To the same effect we cite the following cases, all of which are in point, in various States of the Union, to-wit:

Derwoort and wife v. Loomer, 21 Conn., 245.
Smith's heirs v. Dixon, 3 Met., 438.
Mackey v. Adair, 93 Penn. St., 143.
Marbourg v. Smith, 11 Kans., 554.
Smock v. Dade, 5 Randolph, Va., 639.
Robinson v. Murphy, 69th Ala., 543.
Granger v. Batchelder, 54 Vt., 248.
Penniman v. Patchin, 5 Vt., 346.
Carter v. Talcott, 10 Vt., 471.
Vail v. Conant, 15 Vt., 314.
Waddinghams v. Gay, 73 Ill., 415.
Maddux v. Bevin, 39 Md., 485.
Levy v. Brown, 56 Miss., 83.
Preston v. Hill, 50 Cal., 43.
Ambrose v. McDonald, 53 Cal., 28.

And in support of the same proposition, as being generally the law in the United States, we cite Weeks on Attorneys, Sec. 230.

As to the hardship upon the insurance company of their not being protected in what they have been deceived by Laurie's false pretenses of authority into doing, we have simply to say that it stands in the position of any other

person who deals with an agent knowing him to be an agent, and who trusts in the representations of such agent as to the extent of his authority ; such a person, according to all legal principles, takes the risk of the pretense of the agent as to his authority being true.

That the situation of the company, in this respect, is due not simply to the improper conduct of Laurie, but also to the negligence of the officers of the company, is forcibly shown by the call in the letter of Palmer to Laurie for the signature of the administrator of the estate to the blank discharge enclosed in that letter, to be signed by the administrator and returned to the company before the payment of the money on the compromise. The failure of Laurie to procure such a discharge from the administrator for the company, when so called for by the company, as the proper evidence that the proceeding was authorized by the administrator, was ample notice to the company, had any notice been requisite, that Laurie was acting without authority.

But the company was even more grossly negligent than this. When its check was made for the amount agreed on by the terms of the compromise, that check was in the first instance, and no doubt in the ordinary course of business of the company, and certainly with the utmost propriety, made payable to the order of the administrator of the estate of Kennedy. Had the company left it in this shape, Jeffries, the administrator, would have been in a position to return it to the company upon his refusal to ratify the compromise, and Laurie would have been placed in a shape in which he could not have collected the money and kept it from his client, and kept him in ignorance of his proceedings. But the company, upon the mere request of Laurie, and his assurance that the administrator was fully advised of all that was being done, and that it was necessary to use the money in New York without the delay of sending it for the endorsement of Mr. Jeffries, promptly changed it so as to enable Laurie to collect it himself.

So that for all the money which the company has paid out by reason of the trust which they put in the statements

of Laurie as to the extent of his authority, they have their own agents to blame; and their remedy for the money which they have in that manner paid is not against the administrator, but against Laurie.

As to the claim that the judgment against plaintiff would have been likely to have been reversed and the claim ultimately defeated, it is obvious that the proper method of determining this was by the due and orderly prosecution of the cause to a final determination. And neither the attorney who assumed to make the compromise, nor the defendant insurance company, have a right to substitute for the direct adjudication of these rights, in the orderly course of law, in which all the facts can be duly inquired into before a jury, and the witnesses subjected to cross-examination, an informal sort of trial before a judge, without a jury, and without a right of cross-examining witnesses—in which this most material issue is reduced to the place of a mere collateral incident.

And if the defendant has put itself out of court, so that he can not be reinstated, it is his own act, and his own fault, and defendant's negligence has contributed to the facts being concealed from plaintiff so that he had no opportunity to remonstrate or dissent before the entry of the dismissal. And the hasty action, and the mistake of defendant in this particular, are not chargeable to the plaintiff.

13. In accordance with the principles indicated with the foregoing avowal on the part of Laurie touching Kennedy's estate having been reputed to be one which "*would furnish much litigation and revenue to attorneys, therefore*," etc., the whole evidence in this cause shows him trying to fleece the estate, and Crews endeavoring to protect it from Laurie's cupidity and dishonesty.

The ruling of the Circuit Court should be reversed and the entry of satisfaction of the judgment expunged and annulled.

JOHN W. BOOTH and
T. W. B. CREWS,
Attorneys for Plaintiff in Error.

ADDENDA.

For convenience we insert copies of the Sections of Missouri Statutes referred to in our brief.

WAGNER'S STATUTES OF MISSOURI.

TITLE ADMINISTRATION.

Vol. 1, p. 88.

SECTION 38. Every executor or administrator, after the appraisement, shall sell at public sale all goods and chattels of the deceased that are liable to perish, be consumed, or rendered worse by the keeping, giving such credit as he may think best, not exceeding one year, and take bonds or notes with good security of the purchaser.

SEC. 39. If the perishable goods be not sufficient to pay the debts, the executor or administrator shall, in the same manner sell other personal estate, until the debts and legacies be all paid, but specific legacies shall not be sold in any case, unless it be necessary for the payment of debts.

SEC. 44. If any executor or administrator apply to the court for permission to sell the personal estate of the deceased, or any part thereof, at private sale, and the court be satisfied that such sale would not be prejudicial to the persons interested in the estate, it may order such sale, and prescribe the terms thereof.

Vol. 1, p. 90.

SEC. 59. All executors and administrators may give receipts and discharges for money received by them on account of the deceased; but if there be more than one executor or administrator a majority of them shall join in such receipt or discharge, or they shall be void.

Page 89.

SEC. 40. Executors and administrators may assign the notes and bonds of the estate to creditors, legatees and distributees in discharge of an amount of their claims equal to the amount of such bond or note.

Page 87.

SEC. 26. Executors and administrators shall collect all money and debts of every kind due to the deceased and give receipts and discharges therefor; and shall commence and prosecute all actions which may be maintained and are necessary in the course of his administration, and defend all such as are brought against him.

Page 108.

SEC. 9. In all settlements of executors or administrators, the court shall settle the same according to law, allow all disbursements and appropriations made by order of the court, and all reasonable charges for

funeral expenses, leasing real estate, legal advice and service, and collecting and preserving the estate; and, as full compensation for their services and trouble a commission of five per cent. on personal estate, and on money arising from the sale of real estate.

Page 110.

SEC. 18. At his final settlement the Court shall give credit to the executor or administrator for all the debts which have been charged in the inventory as due to the estate, if the court be satisfied that such debt was not really due to the estate, or that it had been balanced or reduced by off-sets in any court of competent jurisdiction, or the debtor was insolvent, or that, from any other cause, it was impossible for the executor or administrator to have collected such claim by the exercise of due diligence.

SEC. 19. At the time of such settlement, the court may, in its discretion, order the executor or administrator to sell at public auction all notes, accounts and choses in action remaining in his hands upon such terms as it may direct, and report the proceeds of such sale to the court at its next regular term, and said settlement shall be continued to such term.

Page 90

SEC. 52. If any person die, leaving horses or other stock that require attention, crops ungathered, property so exposed as to be in danger of loss in value, or work in an unfinished state, so that the estate would suffer material loss from the want of care and additional labor, the executor or administrator may, until the meeting of the court, procure such indispensable labor to be performed, on the most reasonable terms that he can.

Page 90.

SEC. 58. The court may, at any time, make such orders as the interest of the estate may require for the speedy collection of debts, or the sale and distribution of personal property.

Rev. Stat. of Mo., 1879, Vol. I, p. 37.

SEC. 242. *Administrators, with approval of court, may compound with debtors.* When any debtor of any deceased person is unable to pay all his debts, the executor or administrator, with the approbation of the Judge of Probate, may compound with such debtor and give him a discharge on receiving a fair proportion of the same. (New section, which went into effect in November, 1879. See section 3168, p. 531, Rev. Stat. of Mo.)

And to vindicate the truth, which, it is to be hoped, is not out of order under the circumstances, the following is appended:

MARSHALL, MO., December 26, 1883.

COL. T. W. B. CREWS, St. Louis, Mo.:

My withdrawal from the firm of Crews, Letcher & Laurie was not occasioned by anything pertaining to the firm business. I recollect one or two occasions in 1872 or 1873 in which you spoke to Laurie and myself about the refusal of the County Court of Franklin County to pay the remaining $7,500 which the court had engaged to pay, but never heard you express yourself as having ratified or as approving such refusal. And on no occasion did I offer to give to Mr. Laurie the $1,500 coming to me out of said $7,500 when paid. It may be proper to add that my interest in the $7,500 did not accrue on account of my membership in the firm of Crews, Letcher & Laurie.

Respectfully, WM. H. LETCHER.

(See Laurie's affidavit, p. 43.)

110-305

110-305

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1883

[No. 203].

C. S. JEFFRIES, Adm'r. of ALLAN A. KENNEDY, Deceased, *Plaintiff*.

vs.

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, *Defendant*.

IN ERROR.

STATEMENT BY GLOVER AND SHEPLEY, FOR DEFENDANT IN ERROR.

ST. LOUIS: PRINTED BY THE CENTRAL LAW JOURNAL.

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THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK, *Defendant*.

IN ERROR.

STATEMENT BY GLOVER AND SHEPLEY, FOR DEFENDANT IN ERROR.

This cause originated by a motion on the part of C. S. Jeffries, Administrator *de bonis non* of Allan A. Kennedy, to set aside and vacate an entry of satisfaction of a judgment rendered in his favor October 8, 1877, against the de-

fendant in error on a policy insuring the life of Kennedy. The motion was filed December 15, 1879, and set forth substantially that the entry of satisfaction was made by *Joseph S. Laurie* wholly without authority from the plaintiff, and in fraud of his rights; and without consulting plaintiff, and after said Laurie had been notified by plaintiff's attorney, T. W. B. Crews, that plaintiff would not satisfy or assent to a pretended settlement or compromise of *said cause* entered into, as plaintiff was informed, between said Laurie and the defendant. The motion further stated that the plaintiff himself had no power to compromise or assent to a compromise, without a previous order of the Probate court granting him such power. (Rec. pp. 3 and 4).

The motion was brought to a hearing January 26, 1880, and was overruled. (Rec. pp. 46, 47, 48). The testimony consisted of affidavit, and a great part of it was intended to show that Joseph S. Laurie and T. W. B. Crews, who had been partners in the practice of the law, had disagreed in the management of their business, and been unjust each towards the other.

So much of the testimony as bore upon the merits of the motion tended to prove the following facts:

That in Kennedy's application for said policy on his life, he was asked, "Are you married or single?" and answered "single;" the truth being that at the time of this answer he was married; his wife, whom he had deserted, residing in Canada. That the right of Kennedy's administrator to recover on the policy was doubtful. Nevertheless Charles W. Jeffries (original administrator of Kennedy) retained Crews and Laurie, then partners in law practice, to prosecute a suit on the policy, even to the Supreme Court, for a contingent fee of one half the amount to be recovered; they to have power to compromise the claim in whatever manner they should deem to be for the interest of the estate. That afterwards, Col. Crews being called on as a witness by plaintiff, withdrew from further professional

connection with the case, and so stated on oath, when examined as a witness in the cause, in the presence of the court and the respective parties.

The principles of law governing the case were settled 22 Wall. 47, 48. Jeffries vs. Ins. Company.

After this decision in the Economical Insurance Co. case, there were two trials of this cause in the Circuit Court. In the first trial, the jury found a verdict for the plaintiff, contrary to the instructions of the court, which verdict was set aside. On the second trial the jury found a verdict for the plaintiff, contrary to the instructions of the court, for $13.340, but the Circuit Court refused to set it aside, and entered judgment, and the defendant, by writ of error removed the cause into the Supreme Court of the United States.

Afterwards, on the 14th of Feb'y 1879, the writ of error being then pending, and the cause being several years from call on the docket of this court, an agreement of compromise was made between said Laurie, attorney of record for plaintiff, and O. H. Palmer, solicitor for defendant, by which defendant paid to Laurie, as plaintiff's attorney $9401.43 in satisfaction of plaintiff's claim, said Laurie having in his possession at the time the policy in suit and surrendering the same to defendant. The defendants writ of error was dismissed in pursuance of the terms of settlement. That in the whole matter of the compromise the Insurance Co. acted with the utmost good faith. (Rec. p. 28.) That the company had not been very anxious to make the compromise and on complaint being made by plaintiff, immediately offered to rescind the settlement, provided plaintiff would return the money paid to Laurie and reinstate the cause for trial. The actual entry of satisfaction was not made till December 15th 1879. The Circuit Court found as a fact Laurie had express authority to make the compromise; that plaintiff's claim was doubtful, if not worthless, and in the

compromise he effected, Laurie had acted wisely, as far as money was concerned.

POINTS AND AUTHORITIES, BY GLOVER AND SHEPLEY, ATTORNEYS FOR DEFENDANT.

THE JUDGMENT MUST BE AFFIRMED.

(1.) Though an attorney merely by being retained as such to prosecute a suit has no authority to compromise; yet, if he does so in good faith towards his client and secures for him all or more than the client could have gained by a faithful and able prosecution of the case, the compromise, after being executed will not be disturbed.

7 Cranch 436, Halker v. Parker.
14 Iowa 286, Potter v. Parsons.

It is difficult to see upon what principles the court will set aside a settlement fully executed by an agent, which brought no injury upon the principal, but in fact secured to him more than he was entitled to receive.

(2.) All authorities agree that when specially authorized by his client, an attorney may compromise. The finding of the court in this case, that the attorney had such authority is conclusive of the fact. Without the finding of the court the evidence is sufficient to establish the fact. Laurie's testimony is positive and he is not contradicted. The statement of Crews that he never knew of the agreement sworn to by Laurie cannot disprove Laurie's statement.

(3.) The motion to set aside the satisfaction was properly overruled, because the plaintiff in no event owned more than one-half of the judgment. If the judgment had been paid, as rendered by the circuit court, the plaintiff was to receive only one-half of it. If on prosecution of the writ of error it had been affirmed by this court, only one-half of

it belonged to plaintiff. The other half did belong and was to belong, in any event to Laurie. How, then, could a motion be granted that would force the defendant to pay to the plaintiff the whole judgment, when the owner of one-half of the judgment had already released his own interest if not the whole judgment?

(4) The plaintiff's theory of the case is this: The contract by and between Laurie and the first administrator of Kennedy and Charles W. Jeffries to prosecute for a contingent fee of one half, with power to compromise etc., if made; was champertous, illegal and void; *ergo* Laurie had no power; *ergo* the compromise settlement was void.

That Charles W. Jeffries had no power without the assent of Probate Court to authorize Laurie to compromise; *ergo* the settlement was void.

Our answer is: the contract as made was not champertous under the laws of Missouri. The attorney did not assume to pay any part of the costs of the litigation.

66 Mo., 51, Duke v. Harper.

The laws of Missouri do not prohibit an administrator from compromising a suit or disposing of personal property without previous authority of the Probate Court.

On this subject the common law prevails in Missouri.

1 Mo., 749, Overfield v. Bullett.

The executor or administrator has absolute power over the whole personal estate as trustee of course responsible for any breach of trust.

2, Williams, Ex'ors.

With Perkins, note top p. 998, bottom p. 932.

It is prudent for an administrator to have a previous order of the court; but not necessary. Concede that the contract made by the original administrator to prosecute the claim for a contingent fee of one half the amount to be